COLLECTIONS 101

A TRAINING MANUAL FOR ENTRY LEVEL DEBT COLLECTORS

Kenneth R. Besser

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About the author:

Having graduated high school more than a year in advance of his class, Kenneth R. Besser chartered his first business corporation, a regional wire rope/steel cable distribution company, at the age of sixteen. Since that early beginning he has successfully owned and operated many business ventures including but not limited to a restaurant and catering operation, a custom and speculative single-family home construction company, a Macintosh software development, licensor and publishing company, a medical practice consulting and management company, and retail distinctive artwear and craft gallery. During his thirty years of business experiences, Besser also obtained a Bachelor of Science degree, attended two years of medical school, graduated law school with honors, simultaneously served as two law review editors (both administrative editor and research editor), served as a law school associate professor in legal methods and drafting and a continuing legal education lecturer on several topics, and remained married to his wife, a practicing family physician, and raised six excellent children.

As a medical practice management consultant, Besser has overseen several installations of medical practice operation and management systems using two different programs, both of which were integrated computerized medical records, scheduling, billing and financial management tools with knowledge based artificial intelligence driven total medical practice solutions. In addition to overseeing the installation and operation of these systems, Besser personally trained or supervised his subordinate training staff as they trained all employees of the medical practices, from physicians to front desk personnel, as a component of his medical practice management consultant services.

As a business owner and medical practice manager, Besser has overseen both businessto-business and consumer primary collection staffs ranging from single to multipleperson collection departments. During his long career as a lawyer, Besser has advised many clients concerning the main federal laws dealing with consumer credit issues, the Fair Debt Collection Practices Act and the Fair Credit Reporting Act and appropriate state consumer credit and consumer protection laws in his clients' jurisdictions.

During 2005, Besser planned, established, and coordinated a project for an international publicly traded corporation to design, implement, and initially operate a debt collection agency with United States operations and an offshore call center. Besser pushed the project from assignment to implementation delivering the first ten agent team of collectors fully trained in policies, procedures, and work instructions using the Latitude collection management software platform in twenty-one days (and nights, to his family's deep and constant chagrin).

Besser is a member of the American Collectors Association in the Member Attorneys Program, the Asset Buyers Division, and the Healthcare Services Program and an Editorial Board Member of Eli Research's Debt Collection Compliance Alert.

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Introduction

In this Introduction, you will:

• Consider your personal values, vision, and mission that are making you want to become a debt collector.

Welcome to Generic DCS (GDCS), which stands for Generic Debt Collection Service. We are debt collectors, this is an attempt to collect a debt, and any information obtained will be used for that purpose. You will come to understand completely the importance and placement of the preceding sentence very soon.

In the meantime, before we get started, let's do some of that Stephen Covey 7 *Habits of Highly Effective People* stuff and "begin with the end in mind." In order to be happy and successful as a debt collector, you have to really like what you are going to be doing in that career for the foreseeable future. In order to really like what it is that you are doing for a career every day, it has to be part of your values, vision, and mission for your daily living.

Therefore, please take a few moments and write in the space below your values, vision, and mission about why you want to become a debt collector. If you have any problem getting started on this, then feel free to review Generic DCS's values, vision, and mission statements on the next page.

Section 1.1: Our Values: Reciprocal Rights, Responsibilities, and Respect

Our society is or at least should be based on a system of reciprocal rights, reciprocal responsibilities and reciprocal respect.

When a consumer buys from a business on credit, that consumer has a right to expect value in return for the responsibility to pay for the purchase according to the agreed upon terms. When a business sells to a consumer on credit, that business has the responsibility to deliver value as expected in return for its reciprocal right to expect the debtor to pay for the purchase according to the agreed upon terms. This credit relationship is based on mutual respect. The customer putatively respects the business enough to buy its product or use its service and the business respects the debtor enough to grant the consumer credit.

When the debtor fails to pay according to the agreed upon terms, someone has to recover the credit granted in a professional manner that enforces the agreed upon payment terms, but maintains as much as possible the mutual respect between the debtor and the business.

Section 1.2: Our Vision: Fully Integrated Professional Consumer Debt Collection Services

When a consumer credit customer fails to pay according to the agreed upon terms, using fully integrated professional consumer debt collection services is the most effective manner and means to resolve the problem while still attempting to maintain the mutual respect between the business and the consumer.

Section 1.3: Our Mission: Debt Collection Using Local Action with a Global Reach

Our mission is to enhance and synergize fiscal, physical, and human resources to optimally provide consumer debt collection services and to become a first rate worldwide consumer debt collection service by creating and utilizing a national and international network of consumer debt collectors that can effectively and cost efficiently recover consumer credit using vertically and horizontally integrated local action that is coordinated to have a global reach.

Chapter 2: A Career in Debt Collection

In this chapter, you will:

- Develop an understanding of consumer credit and the debt collection business
- Learn some basic definitions about debtors, consumers, debt collectors, and types of debt
- Discover why some consumers believe they can avoid paying their just debts
- Understand the role of debt collection agencies and debt collectors in overcoming those beliefs

Greetings! And welcome to your new career in debt collection. You are about to become a debt collector, making attempts to collect debts, and any information obtained will be used for that purpose. As you learn more about this business, you will realize that this last sentence or something very close to it and many other "words of the art" will begin to flow off your tongue like water from a faucet.

There are two reasons that this is so. The first reason is that debt collection is one of the most heavily regulated industries in the United States. Therefore, almost every word that you say or write while you are being a debt collector will to some degree be controlled by some federal or state law.

The second reason is that debt collector compensation consumes between fifty to seventy percent of the expenses of an average collection agency. This means that your employer is going to want you to be performing your duties as effectively and efficiently as possible. You will be trained extensively in specific collection techniques that are known to be well within the standards of practice in the industry and are also known to produce successful results. Therefore, your employer is going to expect you to adhere to those standards of practice and use those proven techniques in order to maximize your results.

You will not mind this for two reasons. One reason is that you will not be suffering for breaking any laws. The second reason is that using these proven techniques will more than likely lead to your making more money as a debt collector than if you just "wing it" on your own.

A good debt collector has good computer skills, is a good communicator, is creative, is self-confident, is motivated, and is a problem solver. Most importantly, however, a good debt collector has a particular attitude that he or she really likes the creative and proactive solutions-oriented negotiation process found in a debt collection career.

That being said, let's take a look at how the consumer credit and debt collection industries work.

Section 2.1: How Consumer Credit and Debt Collection Works

Most people have experienced consumer credit from the debtor's perspective. A person who wants to buy goods or services without paying for them immediately obtains credit from the seller of the goods or services and the buyer goes into debt owing the seller an account that is due at some time in the future. There is a written or oral understanding that the account will be paid in full or in installments according to the agreed upon terms.

If the debtor does not pay the account according to the agreed upon terms, then the seller loses some or all of his expected profit because he has to work harder to convince the debtor to pay or charge-off the debt to his profit on other sales. At times, the delay in payments may result in actually losing money on a sale due to the expenses of having to carry the account and collect it. In extreme situations, rather than lose not only his profit, but also his entire investment in the goods or services sold, a seller may have to resort to collection professionals to collect the debt.

If a debt collection agency's services are used by a creditor, the debt collection agency is paid a commission for collecting the debt. This commission normally ranges anywhere from twenty to fifty percent (20-50%) of the amount recovered depending on the difficulty of the collection case.

Delinquent debtors cost businesses about \$24 billion per year in lost capital and profits. Debt collectors play an important part in the world's economy by returning at least some of those lost profits to businesses that extend credit to defaulting debtors.

There are about 6,500 debt collection companies, which each employ about ten collectors. Including debt collectors working directly for credit grantors, there are close to 100,000 debt collectors active in the United States alone.

Section 2.2: Some Early Definitions

Prior to the government including its meanings of words in the major consumer credit laws, the definitions of creditors and debtors were fairly straightforward. A person or company who loaned money or sold services or goods on credit was a "creditor" or a "credit grantor" and the person who borrowed money or purchased goods or services on credit was the "borrower" or "debtor."

A Debtor by Any Other Name ...

The Fair Debt Collection Practices Act (the FDCPA) is a federal law that controls the collection of consumer credit transactions. Rather than stigmatize a debtor by calling him or her a "debtor," the FDCPA speaks in terms of a "consumer" who is defined as "any natural person obligated or allegedly obligated to pay any debt." The FDCPA limits its concern to consumer transactions by also defining a "debt" as "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." Because the debt collection industry also includes commercial debtors who are not consumers, we will continue to refer to debtors mainly as debtors, but still use the word "consumer" in its appropriate context.

Debt Collector

The definition of a "debt collector" has many inclusive and exclusive loopholes. Nonetheless, the FDCPA definition of a "debt collector" essentially is any person who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Based upon their own actions and some federal and state laws, it is very easy for someone collecting their own debts to be considered a "debt collector" as well. Therefore, all people who collect or attempt to collect debts for others or themselves would be well advised to comport themselves as though they were "debt collectors" controlled by the FDCPA and all other federal and state consumer credit collection laws.

Primary vs. Third Party Collectors

Debt collectors who attempt to collect their own debts are referred to as "primary" or "first party" debt collectors and the debt is referred to as "primary" or "first party" debt. In first party debt situations, the debt collector is also called the "credit grantor" or the "original or originating creditor."

Debt collectors who collect debts for others are referred to as "third-party collectors" and the debt is referred to as "third party" debt. Third party collectors usually work on a "contingency basis," which means that the third party debt collector will only earn a commission if and when the collector is successful in actually collecting the debt.

Types of Receivables

Debt accounts are often referred to as "receivables." Receivables are often divided into classes based on the amount of time that has passed since the accounts first became delinquent or on the number of times that collection activities have been attempted on them. The various classes are often referred to as primary, secondary, tertiary, or quaternary. Though the collections industry is slowly agreeing on universal descriptions

of the classes of accounts, the terminology continues to be less than static. Nonetheless, one current classification of receivables is as follows:

- Primary debt is between six and twelve months past due and has usually only been collected upon by the original creditor and possibly one third-party debt collection agency.
- Secondary debt is twelve to twenty-four months past due and is being worked on by a second collection agency.
- Tertiary debt is more than thirty-six months past due and/or is being worked on by a third collection agency.
- Quaternary or warehoused debt is over forty-eight months past due and/or is being worked by a fourth or more collection agency.

Charged-off Accounts and the Secondary Debt Market

The word "secondary" is also used in another context. Instead of sending debts out to a debt collector on a third party contingency basis, creditors will sometimes simply charge off accounts as being uncollectible by the company and sell their debts on what is called the secondary debt market.

Charging off and selling uncollectible accounts allows the credit grantor to obtain a certain and immediate return in an otherwise speculative situation. The amount of return is usually from two to ten cents on the dollar depending on the quality of the debt being traded. Properly done, the purchase and subsequent collection of charged off debt from the secondary debt market can be a very lucrative business. Not to mention the fact that it employs a lot of debt collectors.

Intentional vs. Unintentional Debt

Consumer debt is often classified as intentional or unintentional debt.

- "Intentional debt" is the majority of consumer debt and is intentionally incurred by consumers who want to enjoy the benefits of goods or services without having to pay for them completely in advance
- "Unintentional consumer debt" is a payment obligation that is forced upon consumers by unexpected adverse circumstances such as a sudden illness or a casualty to property like an uninsured car wreck or house fire.

It is important for debt collectors to recognize whether the accounts they are collecting are intentional debt or unintentional debt, because the approaches for these two types of debt are often quite different.

Secured vs. Unsecured Debt

Secured debt is created when the debtor grants the creditor a security interest in a particular asset as collateral to give the creditor some measure of guarantee that the debtor will repay the debt. The most common examples of secured debt are when a borrower grants a security interest in a house or a car to a lender in order to obtain a loan.

The vast majority of debt, however, is unsecured debt. The leading examples of unsecured debt are credit card debt, medical debt, and utility debt.

Delinquent secured debt is much easier to collect than unsecured debt. If a borrower fails to repay the loan, then the lender simply forecloses on its security interest in the collateral and takes and sells the collateral to repay the loan. If the value of the collateral is less than the outstanding balance on the loan, then the deficiency becomes unsecured debt.

Delinquent unsecured is more difficult to collect than secured debt, because the debtor has nothing to lose except the time and frustration that it takes to deal with his or her credit problems. Dealing with these problems may include putting up with collection calls, suffering harm to the debtor's credit rating, and, in extreme cases, being a defendant in a debt-related lawsuit.

Secured debt is treated more favorably in bankruptcy proceeds than is unsecured debt. Secured creditors can usually recover the collateral for a loan out of a bankruptcy. Unsecured creditors almost never receive more than pennies on the dollar in bankruptcy cases.

In-Statute vs. Out-of-Statute Debt

A statute of limitations is a law that sets the deadline by which a person must bring a lawsuit about a claim. A lawsuit that is brought before the deadline expires is referred to as being brought within the statute of limitations. If the person wanting to sue someone else does not bring the lawsuit within the deadline set by the statute of limitations, that person's claim is then outside of the statute of limitations and that person is forever barred from bringing a lawsuit on that claim

A debt is "in-statute" up until the date that the statute of limitations expires and is "outof-statute" after the deadline expires.

There are two types of statutes of limitations. The first type of statute of limitation is called an "affirmative defense" statute, because it is used as an affirmative defense at the time of answering a complaint filed in a lawsuit. This means that the issue of whether a debt is in-statute or out-of statute does not come up until the creditor sues on the delinquent debt.

If the complaint in a lawsuit is filed after the statute of limitations deadline, then the debtor can claim as an affirmative defense when answering the complaint that the statute of limitations has expired. If the debtor can prove that the complaint was filed after the deadline, then the debtor will be granted what is known as a summary judgment and the debtor will not ever have to pay the debt, unless it is secured by an asset that the debtor wants to protect or the debtor is sensitive to having the unpaid claim appear on the debtor's credit report.

The second type of statute of limitations is called a "claim-invalidating" statute, because it not only serves as a bar to bringing a lawsuit on a claim, but it also invalidates completely the claim itself.

The difference between "affirmative defense" and "claim-invalidating" statutes of limitation is very important. A creditor can take any collection activity to collect and out-of-statute debt in an "affirmative defense" state except for filing a lawsuit on the debt. A

creditor cannot take any action to collect an out-of-statute debt in a "claim-invalidating" state after the deadline in the statute of limitations expires.

The vast majority of states have "affirmative defense" statutes of limitations. At the time of writing this book, only Wisconsin and Mississippi have "claim-invalidating" statutes of limitations.

In addition to statutes of limitations, some states also have statutes of repose, which are only similar to statutes of limitations.

Not all statutes of limitation in a particular state are the same. Some states have different statutes of limitations for different types of claims. In addition, some statutes of limitations may cancel others. For instance, a statute of limitations in the Uniform Commercial Code (UCC) for credit card debt is four years, which may trump a statute of limitations for contracts of six years.

Statutes of limitations may be tolled by certain actions of a debtor (such as leaving the state) and restarted by other actions of the debtor (such as making a partial payment on a debt).

When debtors move across state lines the issue often arises of "which state's statute of limitations applies?" Does the statute of where the debt originated apply or does the statute of where the debtor now lives apply? Most courts state that statutes of limitations are procedural matters and, therefore, the statute of limitations for where the lawsuit is being filed applies. Because the FDCPA requires a lawsuit to be filed in the state and county where the contract was signed or the state and county of the debtor's residence at the time of filing the lawsuit, this narrows the choices to two places. The essential answer is that the statute of where the debtor currently resides applies.

Even if the contract includes a choice of law clause, statutes of limitations will still usually be determined to be procedural and the statute for the state where the case is filed will apply.

It is important for debt collectors to know whether they are attempting to collect a debt that is in or out of statute. Threatening to bring a lawsuit on a debt that is out of statute is a violation of the FDCPA. An ideal way to let the debt collector know whether he or she is collecting in-statute or out-of-statute debt is to have a computerized collection management system determine the type of account and the latter of the delinquency date or the last payment date, then select an appropriate statute of limitations for such a type of debt from a state-specific look-up table, and calculate and display the most likely statute of limitations deadline date.

Nonetheless, most collection management systems are not that well developed. Therefore, the majority of collection agencies are left with the "hard way" of doing it, which is to post a list of statutes of limitations for each type of debt for each state and leave it posted in each debt collector's workspace so that the collector can stay aware of the statute of limitations on a case by case basis.

Section 2.3: Why Consumers Avoid Paying Their Debts

Regardless of whether the debt a debtor is delinquent in paying is intentional or unintentional, delinquent debtors sometimes believe that they can simply get away with not paying their bills.

One reason that delinquent debtors may think they can get away with not paying their bills is that they think the system is rigged in their favor. Oftentimes they think that the cost-benefit ratio usually does not justify a credit grantor spending the time and money needed to pursue a debtor to where the debtor currently resides, to discover the debtor's assets, to negotiate and monitor a payment plan, and, if necessary, to enforce that payment agreement in court.

One problem that prevents credit grantors from enforcing their payment terms is that the "system" <u>is</u> rigged in the debtor's favor. Pursuant to the Fair Debt Collection Practices Act, credit grantors can only use limited civil means to collect debts, must first find "skipped" debtors, must then find and be willing to use some leverage to convince debtors to pay, and can only sue debtors in the debtors' places of current residence.

Section 2.4: What Debt Collection Agencies and Collectors Can Do

The solution to convince a reluctant debtor to pay his or her just debts is for a debt collection agency to use efficiently its substantial resources to shift the cost-benefit ratio back toward the credit grantor's favor. A collection agency can shift the cost-benefit ratio by creating a multi-disciplined network of debt collectors who can cost-effectively locate "skipped" debtors, contact them, negotiate a payment plan, and sue a debtor who does not pay as agreed.

Section 2.5: Debt Collection is Not Just a Job – It's a Career

A key tool of an effective debt collection program is to use computers and other technology to manage and service a huge volume of cases using human resources only where they are actually needed. Another key tool to effective debt collection is to use a debt collector who is an effective negotiator. This combination of the right physical resources with the right human resources can lead to successful collections.

When using those human resources, however, the people must be well trained, well motivated, well supported, well supervised and well compensated. In order to manage effectively and prevent the significant expense of employee turnover, debt collection agencies, debt collectors, and support personnel must all understand that they are working on a career path and not just a job – and that is where effective training begins.

Section 2.6: Coming Up Next

Let's turn now to where a career path in debt collection might lead by looking at all of the participants in the receivables trading, management, and collections industry.

Chapter 3: Participants in the Receivables Trading, Management, and Collections Industry

In this chapter, you will:

- Discover the various participants in the receivables trading, management and collection industry including:
 - Credit grantors or originators
 - Debt purchasers
 - Debt traders
 - o Debt portfolio managers
 - Collection agencies
 - o Collection law firms

Debt collection has become a major part of an even larger industry that has at times been called the account receivables management (ARM) industry. This ARM industry is now expanding into what is more accurately described as the receivables trading, management, and collections (RTMC) industry.

The beginning of the receivables industry is so common and familiar that it almost goes without saying. Customers (also called "consumers" or "debtors") buy goods or services using credit accounts and then either unintentionally fail or intentionally refuse to pay the credit accounts according to the agreed upon terms. The failure of the debtor to pay the credit account when due often requires the creditor to use a collection agency to recover the credit extended to the consumer.

The receivables trading, management and collections RTMC business is a relatively recent expansion of the accounts receivables management ("ARM") industry. Whereas ARM has historically concerned itself primarily with the actual collection of delinquent accounts, the RTMC business has expanded into three separate areas of related business:

The three segments of the RTMC business are:

- The purchase and sale of debt portfolios
- The management of the purchase and sale and collection of debt portfolios
- The actual collection of debt portfolios

The concept and practice of buying and selling receivables is not new. The bundling of defaulted loans held by failing savings and loan associations in the 1980's fueled the recent explosive growth of the industry. The federal government was so successful selling off the non-performing loans that other lenders soon followed suit with other types of debt. As other originating creditors saw banks selling off debt portfolios, they also adopted the process. The relatively recent expansion of delinquent consumer debt and distressed loans has brought about the development of a professional and sophisticated receivables trading, management, and collections industry.

With the development of an increasingly sophisticated debt collection system, delinquent receivables have developed into a new type of investment grade asset class and trading commodity. As investors have realized the ability to collect delinquent loans more and more efficiently, they have pursued the purchase of delinquent loan portfolios from all types of credit originators and have developed a secondary market for trading delinquent receivables.

Today the RTMC segment of the finance industry continues to grow and attract new participants. The growing interaction and interconnection between the credit originator participants, the trading participants, the management participants, and the collection participants of the industry has led to the simultaneous horizontal and vertical integration of the RTMC industry.

Let's now look at some of the RTMC industry participants.

Section 3.1: Credit Originators

Credit originators comprise many market segments including, but not limited to, the following businesses:

- Credit cards issued by banks and credit card companies under the Visa, Mastercard, Discover, American Express and other major labels
- Private label credit cards
- Healthcare providers
- Student financial aid

- Automobile loans
- Traditional consumer loans
- Mortgage loans
- Business and commercial loans
- Standard performing and non-performing loans
- Consumer financing
- Sub-prime lending
- Non-sufficient funds returned checks
- Judgment creditors

Traditionally, credit originators sent delinquent accounts receivable to a collection agency. Rather than send marginally collectible accounts to an outside collection agency, however, some credit originators have now expanded their in-house collection staffs to squeeze the last nickel out of as many accounts as possible until they finally give up and charge off the last uncollectible accounts to profit and loss. Accounts that have been charged off to profit and loss are often referred to as charged off receivables. These charged off accounts are sometimes, but not always, grouped into charged-off receivable account portfolios and sold for pennies on the dollar of their face amounts. Other times, originating creditors continue to attempt to collect their charged off receivables or simply allow them to remain uncollected forever.

Section 3.2: Debt Purchasers, Debt Traders, and Portfolio Managers

The transformation of credit originators into debt sellers naturally brought with it the emergence of debt purchasers. Some debt portfolios are sold and resold several times. Of course, wherever sellers and buyers are creating a market in something, traders have to insert themselves as middlemen entitled to a slice of the profits. Pure debt traders never attempt to collect on the accounts that they buy and sell.

The creation of a trading marketplace for charged-off receivables, however, has led to the further creation of another segment of the industry, which is the management of charged-off receivables account portfolios. Portfolio managers earn a fee from investors to oversee the buying, selling and, oftentimes, forwarding to collection agencies of some or all of a particular portfolio.

In a vertical integration of the RTMC industry, established third-party collection agencies have become some of the largest purchasers of charged off receivable accounts portfolios. In a mirror image of this trend, many new receivable purchasers are establishing captive debt collection agencies in the hopes of using economies of scale and technology to capture the traditional agency's profit margin for their own benefit.

Section 3.3: Collection Agencies

Collection agencies may vary in the types of services they provide. The full scope of services may include:

- First party collections Also known as "early-outs," "extended business office services" or a variety of other names, first party collections involve servicing accounts in the name of the creditor
- Third party collections The traditional collection services that most people associate with collection agencies involve the placement of accounts with the collection agency, which are then collected by the collection agency as the agent for the creditor in exchange for a percentage of the amounts collected.
- Skip tracing Intensive debtor location services
- Debt purchasing The buying of delinquent accounts for collection in the name of the subsequent owner, which may be an agency purchasing debt for its own benefit.
- Bankruptcy management A particular specialty of collection services for creditors of debtors who have filed bankruptcy.

Section 3.4: Collection Law Firms

No discussion of the participants in the RTMC industry would be complete without discussing the smallest, but possibly fastest growing, segment of the industry, the collections law firm. Collections law firms have the unique ability to make the ultimate attempt to collect an account by filing a collections lawsuit. Depending on the type of debt being collected, the collections lawsuit may be filed as a matter of course early in the process or as a last resort after all other attempts to contact and negotiate with a debtor have been exhausted.

Most collections law firms have historically been fully independent and serviced a variety of creditor and collection agency clients. Some large high-volume creditors and collections agencies, however, have now vertically integrated their operations by developing captive single-client collections law firms that exclusively service the creditor's or collection agency's particular needs. In addition, some collections law firms have vertically integrated their operations debt portfolios.

Section 3.5: Technology Vendors and Service Providers

As with any type of business, the growth of RTMC industry has fostered the development of a large retinue of technology vendors and service providers whose purposes are to make a profit helping various RTMC participants run their

individual businesses more effectively and efficiently. These vendors and service providers include the following technologies and services:

- Collection software systems
- Consumer/credit reporting agencies/bureaus
- Personal information databases
- Telephony providers
- Call broadcasting providers
- Various types of consultants

The list could go on and on.

Section 3.6: Coming Up Next

Being a debt collector is, for some, a mere entry into a long and varied career in the many jobs found in the RTMC industry. For others, being a debt collector will be so satisfying and lucrative that it is all they will ever want to do.

Having covered the RTMC industry and all of its participants and some of the careers available in the industry, let's explore a bit more deeply the debt collections process.

Chapter 4: The Debt Collection Process

In this chapter, you will:

- Discover the general debt collection process in varying levels of detail
- Explore the requirements for an initial communication with a consumer
- Learn the importance and rules concerning an initial verification period
- Briefly discuss the initial collection call
- Learn the structure of a generic collection agency

The debt collections process may seem to the uninitiated to be very simple. Obtain a portfolio of accounts from a client; contact the consumers and collect the amounts due; and remit the collection proceeds back to the client minus the commissions.

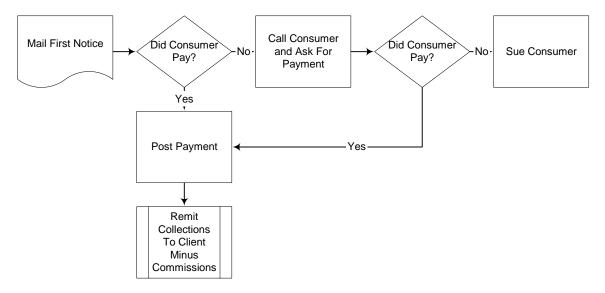


The devil always being in the details, however, a lot of things can happen during this "simple" process.

The collections effort required to convince a consumer to make good on a charged-off receivable account may be as simple as contacting the debtor once through a single reminder letter or reminder phone call or it may become as complex as placing the charged-off receivable account with a series of collection agencies and ultimately with a collections law firm in order to obtain and execute on a judgment. Each step along a full-

blown collection process may have many possibilities, which may lead to a very convoluted path from placement to collection.

For example, the simplest middle step of contacting the debtor and collecting the account may be as little as sending the first collection notice for the account being placed with the agency, which may elicit a payment. On the other hand, the debtor may ignore the first notice, in which case the collection agency may have to resort to an initial collection call. If the initial collection call does not result in a payment, then the creditor may have to sue the consumer.



While this may also seem like a relatively simple scheme, one must appreciate that some level of detail and expertise is required to complete even the first or second steps of these limited processes. For example, depending on the aggressiveness of the collection campaign, the collector may quietly wait for a certain period of time between mailing the first notice and making the initial collection call. In addition, to be both legally compliant and effective, both the first collection notice and the initial collection call must contain several particular pieces of information. Furthermore, the initial collection call will usually have several requisite steps.

Section 4.1: The Initial Communication with the Consumer

Explaining the complexity of these initial steps a little more completely requires knowing that the collections industry is a very heavily regulated business and that the most significant law regulating it is the Fair Debt Collections Practices Act, which is often abbreviated as the FDCPA. We will study the FDCPA in extraordinary detail later. In the meantime, it is sufficient to know now that Section 809(a) of the FDCPA requires an initial communication about a debt to contain:

(1) the **amount of the debt**;

(2) the **name of the creditor** to whom the debt is owed;

(3) a **statement** that unless the consumer, **within thirty days of 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,

(4) a **statement** that if the debtor 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 debtor and a copy of such verification or judgment will be mailed to the debtor by the debt collector; and

(5) a **statement** that, upon the debtor's **written request** within **the thirty-day period**, the debt collector will provide the debtor with the **name and address of the original creditor**, if different from the current creditor.

Section 4.2: The Section 809 Verification Period

Paying attention to the thrice repeated "thirty-day period" in section 809, one should become aware that this is what is often referred to as the "Section 809 Thirty-Day Verification Period." Section 809 gives the debtor this period as an initial window of opportunity during which the debtor may object (for any reason using any manner and means of communication the debtor desires) to all or any portion of the debt.

No collector may do anything during the Verification Period that may overshadow (i.e. shorten or lessen in any length, dimension, way, shape or form) the debtor's right to object to all or any portion of the alleged debt. Therefore, a collector should be especially careful of what he or she writes or says to the debtor during this period of time. In addition, should the debtor request in writing verification of the debt or the name of the original creditor, one must be aware of and compliant with the law, which states that a collector may not take any further collection activity until he or she mails an appropriate response to such a written request.

Section 4.3: The Initial Collection Call

Moving on in the collections process a bit more, an Initial Collection Call should ideally include the following steps:

- Identify and speak only with the consumer
- Identify the collector specifically by personal and company name and as a debt collector
- Deliver the mini-Miranda warning that "this is an attempt to collect a debt and any information obtained will be used for that purpose"
- Explain the particulars of the debt

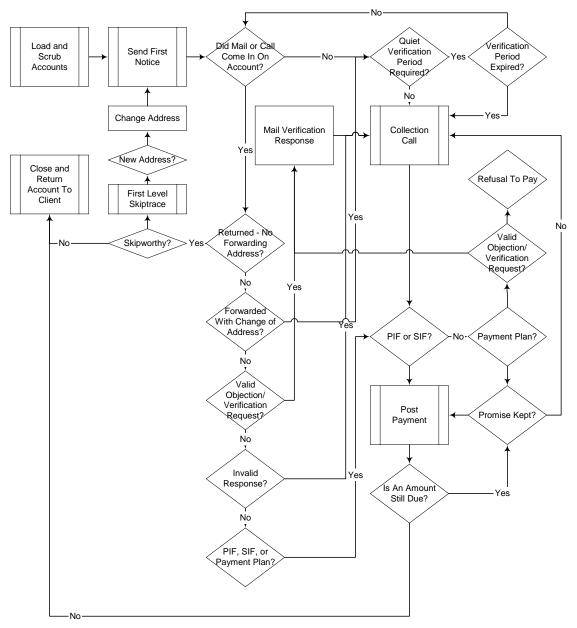
- Pitch the debtor with a request for payment-in-full ("PIF")
- Wait for a "Psychological Pause" until the debtor replies
- Negotiate a PIF, a settlement-in-full ("SIF") or a payment plan agreement ("PPA")
- Document the account file

We will discuss the initial collection call in much more detail later.

Section 4.4: A Little Bit Less Simple Collection Process

Other bits and pieces of the collection process may or may not come into play depending on the circumstances. Requests for verification may come and have to be answered. Bad contact information may be updated with more current addresses and phone numbers. Payment plans may be promised, promises broken, and broken promises repaired again.

A moderately more complex collections process may include the following steps:



But even this is not the final level of detail or the final steps in the process. A payment or payment plan received in the mail after the first notice of debt is sent may not be within the settlement limitations imposed by the client. This may require additional contacts and negotiations. Multiple payment plans may require additional written confirmations and prepayment notices of intent to deposit postdated transaction instruments (such as checks, electronic fund transfers, or automated check handling transactions).

Unlike the simple process imagined by those unfamiliar with the industry, the entire collections process is actually so complex that its entire documentation could and should take up an entire volume often referred to as a Collections Operations Management System manual, a Professional Practice Management System, or a Professional Industry Practices Management and Compliance System.

Section 4.5: Settle, Sue, Sell, Surrender

At some point in any collections process, any owner of a debtor's account or agent of the owner will have one of four alternatives available for resolution of an account: settle, sue, sell, or surrender.

- Settle with a cooperative debtor
- Sue a recalcitrant debtor
- Sell an uncollected account
- Surrender an uncollectible debtor.

As the agent, representative, or advisor to the account owner, a portfolio manager or a collection agency manager, may be called upon to exercise one or more of these options.

At some time in the collections process, if the first notice does not result in a payment and the initial collection call does not result in a payment, then a collector must determine whether additional attempts at written or telephonic contact have a substantial likelihood of resulting in a payment settlement. If not, then the account should either be sent for legal review to decide whether to sue the debtor or surrendered back to the client as being uncollectible. The client may then forward the account to a more effective collection agency, sue the debtor, sell the account to another owner, or just surrender the account as being uncollectible and give up taking any further action.

The collector faced with a failure to settle an account must consider the reasons that no payment can be obtained and the effect that surrendering on an account may have on getting future placements from that particular creditor client. For example, did the first notice even reach the debtor or did it come back as returned mail without a forwarding address? If so, is the account worth investing in skip tracing the debtor to find his or her current address and/or phone number? Was the debtor contacted, but simply refused to pay the account? Will the additional investment of resources needed to extract a payment from a recalcitrant debtor be justified by the expected fees generated by the collection? These and other questions exist at every twist and turn of a moderately complex collections process.

Section 4.6: An Average Collection Agency

It is important that a debt collector understands where he or she sits in relation to the rest of the organization of a collection agency. The organization of any collection agency naturally depends on the type, quality, balance amount, and quantity of accounts that the agency intends to collect. Primary debt requires less effort than quaternary debt. Smaller account balances require larger numbers of accounts and, therefore, larger numbers of collection activities, in order to generate the same critical amount of commissions. The permutations of quality and volume of accounts and number and job responsibilities of collection agency employees are many. Nonetheless, some general descriptions are possible. The initial definition of the average collection agency may best be organized around the processes, roles and responsibilities generally inherent in any collection agency. In a smaller agency, many of these processes, roles and responsibilities may all be played and fulfilled by one person. For example, the owner of a small agency may be in charge of debt acquisition (including sales of third-party collections services and portfolio purchasing), financing, compliance, collections management, and emptying the trash at the end of the day.

In a larger agency, some people may have only one role and responsibility, others may have more than one, and many people may have the same roles and responsibilities. For example, a chief executive officer of a major collection organization may have a chief financial officer, a chief operations officer, a chief legal officer, a chief information technology officer, and other people directly reporting to him or her, all of whom may have two or more subordinate employees, such as controllers or accountants, collectors, payment processors, trainers, quality assurance assistants, and general administrative assistants.

The roles, responsibilities, and processes evident in any average collection agency may include:

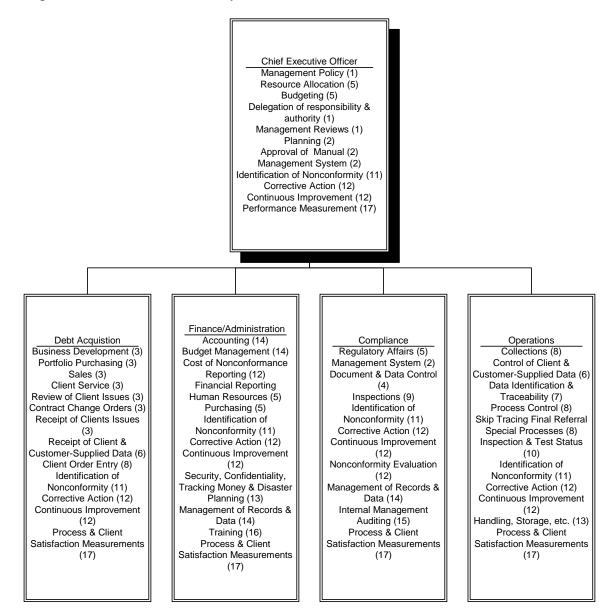
- Executive Planning, Management, and Oversight
- Compliance
- Finance and Accounting
- Human Resources
- Operations
- Purchasing
- Information Technology
- Sales for third party collections (or Debt Acquisition for purchased debt)
- Client Services (or Portfolio Services for purchased debt)
- Collections Management
- Collections Operations
- Correspondence Processing
- Payment Processing

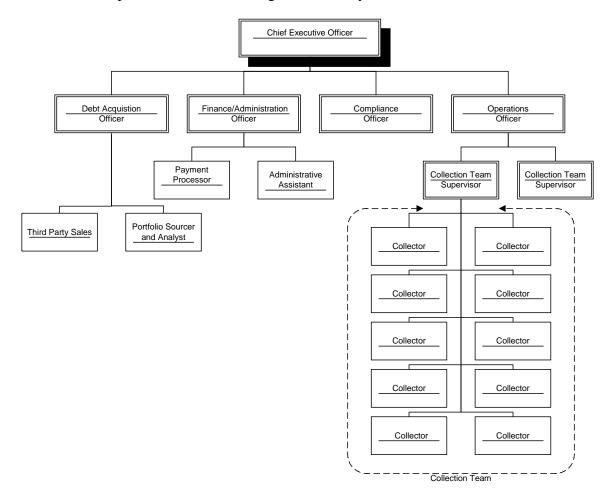
One of the best methods for organization and operation of a collection agency is to follow the format contained in the American Collectors Association (ACA) International's Professional Practice Management System ("PPMS^{TM,}"), which organizes each of an agency's various processes into one of seventeen areas of responsibility.

- 1 Management Responsibility
- 2 Management System

- 3 Review Client Issues/Contract Review
- 4 Document & Data Control
- 5 Purchasing
- 6 Control of Client & Customer Party Supplied Data
- 7 Data Identification & Traceability
- 8 Process Control
- 9 Inspection & Testing
- 10 Inspection & Test Status
- 11 Identification of Nonconformity
- 12 Corrective Action, Preventive Action & Continuous Improvement
- 13 Handling, Storage, Preservation & Delivery
- 14 Management of Records/Data
- 15 Internal Management Audits
- 16 Training
- 17 Process & Client Satisfaction Measurements

An organizational chart for an average collection agency based on functions, roles, and responsibilities such as these may look like this:

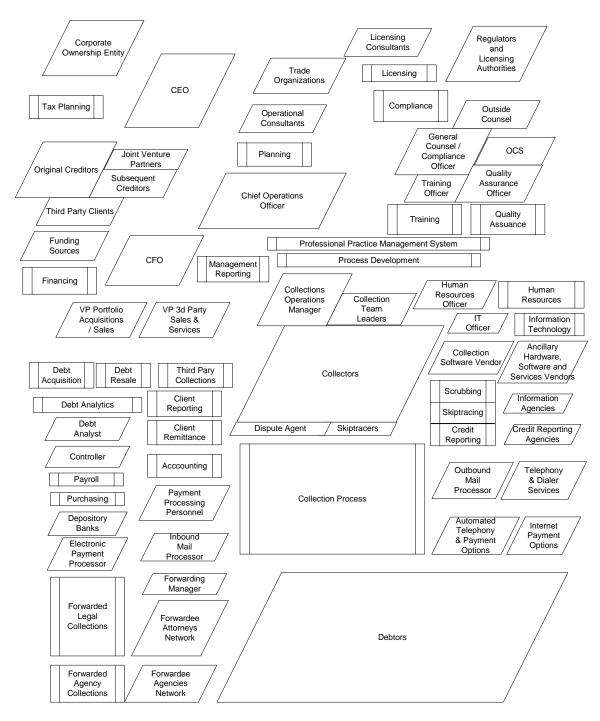




The individual positions for such an organization may look like this:

Once again, the numbers and positions of a particular collection agency will naturally vary depending on the facts and circumstances concerning that agency's makeup of accounts and operations. Nonetheless, the basic structure of roles, responsibilities and tasks will essentially be a variation of what is depicted above.

Another way to look at the internal and external relationships of the roles and responsibilities of an organization in relation to its owners, executives, employees, vendors, regulators, etc. is to use an organizational map. The organization map that follows shows a moderate sized collection agency. Individuals, groups of people, and companies are shown as trapezoids. Processes are shown as rectangles. The size of each element in the map reflects the number of its constituents or its importance to the enterprise.



It is important for a debt collector to recognize his or her role in an organization for two reasons:

- To see his or her roles, responsibilities, and procedures as a very important gear in a finely tuned watch
- To see a career path to higher positions in the organization

Section 4.7: Coming Up Next

Now that we understand the debt collector's position in a collection agency, let's proceed to learning some of the details of that role.

Chapter 5: Initial Communications with the Debtor

In this chapter you will:

- Learn about the basic elements of debtor information
- Discuss the requirements of the initial communication with a debtor
- Study the steps of an initial collection call

Debt collection is not a difficult process, but it is very tedious. Almost none of the people that are in the business claim to be exceedingly brilliant. Though some of them may claim to have proprietary business methods, research indicates that none of them are really doing anything that is not already being done by someone else somewhere else.

Whether a debt collector is collecting an individual debt or a large portfolio of many debts, the collection process is essentially the same. The differences between the successful companies and the unsuccessful ones usually revolve around being more efficient, which usually comes with surviving long enough to gain more experience.

Section 5.1: Obtaining Debtor Information

The debt collection process begins with obtaining from a credit grantor or current creditor all available information about the delinquent consumer and the delinquent debt. Ideally, a debt collector would like to know as much as possible about an account. Sometimes, however, too much information is a bad thing, because it can distract a debt collector from the main point that the debtor's account in a specific amount is long past due and immediately payable.

Nonetheless, the basic debtor information should include:

- Original creditor's account number
- General and/or specific description of goods or services involved in the account,

which may include the:

- Original s creditor' service number (if account is a telecommunications or utility account),
- o Original s creditor' service address (if the account is a utility account)
- VIN#, make, model and year for auto, boat, etc. purchased or used as collateral
- Primary debtor's name
- Primary debtor's social security number
- Primary debtor's last known address
- Primary debtor's home phone number
- Primary debtor's work phone number
- Co-debtor's name
- Co-debtor's debtor social security number
- Co-debtor's last known address
- Co-debtor's home phone number
- Co-debtor's work phone number
- Account open/create date
- Credit line/open amount
- Last use date (if account is a revolving charge)
- Date of delinquency
- Charge-off date
- Charge-off amount
- Last billing or invoice date
- Last pay date
- Last pay amount
- Collateral repossession date (if repossessed)

Prior to beginning collection on a debt or portfolio of debts, a collection agency should perform an initial check to verify that the debts are generally valid, verifiable, and easily provable in a court of law. Some agencies also verify that the debts are still within the statute of limitations, which is the time period during which a lawsuit could be brought on the accounts if required.

To enhance the efficiency of an initial contact campaign, the most effective check, prior to the initial contact, is to run a "scrub and append" to verify that the debt collector is attempting to contact the best telephone and address of each consumer. Rather than spend a lot of time and money trying to contact deceased, bankrupt, or incarcerated debtors, some collection agencies run another check to determine whether the delinquent consumer is deceased, is or has been involved in a bankruptcy proceeding, or in prison. This initial check is sometimes called a "scrub."

There is a dispute as to whether scrubbing an entire portfolio for decedents (dead people), bankrupts, and inmates is cost effective. Therefore, some collection agencies just let this information concerning death, bankruptcy, and incarceration come to light during the initial delinquent consumer contact process. Nonetheless, doing all of the scrubs will yield the most increase in the efficiency and/or effectiveness of a letter and call campaign on a debt portfolio.

By the time that the account gets to the debt collector, all of the available information should be verified, updated, and imported into whatever collection account management system is being used.

If a predictive dialer is not being used, then a collector may wish to make some initial review of the basic data prior to dialing the debtor. If a predictive dialer is being used to pass live calls to any available debt collector, then the collector will not have an opportunity to review any of an account's specific information until the call begins. Therefore, the collection software system should be easy to navigate and the debt collector should be proficient at using the system to access as much of the information as is needed "on the fly" after taking an initial collection call from the predictive dialer.

Prior to the debt collector making or taking the initial collection call, most collection agencies send an initial listing letter stating that the debtor's account has been placed with the agency. Let's look at this process.

Section 5.2: Initial Communication with the Debtor

Assuming that the debtor still has a pulse, is not involved in a bankruptcy proceeding, and is not in prison, the next step in the debt collection process is to send a "listing letter" informing the debtor that the debtor's account has been placed with the debt collector for collection. Unless some other letter, phone call or contact precedes it, the listing letter is usually the initial communication between the debt collector and the debtor.

Some debt collectors send a listing letter including all of the Section 809 verification information as the first contact with a debtor. Some debt collectors also include with the notice of listing all of the verification information concerning the name of both the current and original creditor, if they are different. The FTC and many courts have determined, however, that sending this verification information with the listing letter does not prevent the debtor from asking for verification of the account or satisfy in advance the duty to provide the information a second time after such a request.

If a consumer disputes all or any portion of a debt, then the debt collector must cease all collection activity and ask the creditor for verification of the account. The verification can be as little as confirming that the debtor is the correct consumer and the amount of

the account is correct. Once the collector has mailed this verification information to the consumer, the collector can continue with all other allowable collection activity.

Some debt collectors use a phone call as the initial contact with delinquent consumers prior to mailing any letter at all. If a collector is using a phone call as an initial contact, then, in order to avoid the expense of sending a Section 809(a) "five-day" letter to a called consumer who either agrees on the phone to make payment or settlement in full on a later date or disputes the debt, the initial contact phone call with a debtor should always include all of the five things set forth in Section 809(a).

Using the initial collection call as the initial communication or making an initial collection call during the "thirty day section 809 verification period" are dangerous propositions and require particular care in choosing every word that it said so as not to overshadow the verification period in violation of the FDCPA. We will learn later, however, how to do this legally.

Section 5.3: The Initial Collection Call

If the initial communication with the debtor is the listing letter, then the next step in the basic collection process is the initial collection call. If no listing letter is used, then the initial communication will be the initial collection call.

An effective tool for making the initial collection call is to use a computerized collection account management system with a predictive autodialer attached to call debtors and verify the existence of a live answerer at the debtor's last known home phone number. If such a live answer occurs, then the predictive dialer immediately transfers the live call to an available debt collector. The debt collector will then verify that he or she is speaking directly to the intended debtor and begin the initial collection call.

The initial collection call is the key moment in the management of a debt collection case. Properly executed, it should proceed and conclude having achieved several specific objective results. If the initial collection call is properly done, before the debtor realizes what has happened, the debtor will have given the debt collector several pieces of information about the debtor's personal situation and assets and consented to pay the account.

Section 5.4: The Steps of the Initial Collection Call

An initial collection call has anywhere from four to eight or more parts depending on how it is divided.

As we stated above, an Initial Collection Call should ideally include the following steps:

- Identify and speak only with the consumer
- Identify the collector specifically by personal and company name and as a debt collector
- Deliver the mini-Miranda warning that "this is an attempt to collect a debt and

any information obtained will be used for that purpose"

- Explain the particulars of the debt
- Pitch the debtor with a request for payment-in-full ("PIF")
- Wait for a "Psychological Pause" until the debtor replies
- Negotiate a PIF, a settlement-in-full ("SIF") or a payment plan agreement ("PPA")
- Document the account file

The simplest grouping of these eight steps includes the open, the factual assessment, the dun, maybe the negotiation, and the close. Some followup may be needed to finish collection of an account. If promises to pay become broken in the future, then additional contacts may be required. If no resolution can be found with the debtor's cooperation, then a solution without the debtor's cooperation, such as a lawsuit, may have to be used as a last resort.

Let's look at the various steps of an Initial Collection Call.

The Open

The open begins with the identification of the debtor. Try to begin speaking with a debtor using an informal tone and approach to set the debtor at ease.

Try to begin with an informal request to speak with the debtor on a first name basis, such as "Can I speak with 'Jim?'" If the debtor is already on the line or the person speaking asks for the debtor's last name, then just say "Jim Jones?"

Once you get to "Yeah, this is Jim Jones," then confirm the identification with "Mister Jones, do you still get your mail at ..." and say just the street address without the city, state or zip code.

The identification of the debtor is followed by identification of the debt collector and the collection agency.

The identification of the debt collector and collection agency must also always include the mini-Miranda warning "I am a debt collector, this is an attempt to collect a debt, and any information obtained will be used for that purpose."

If a collection agency is recording collection calls, then the collector should advise the debtor that they are speaking on a recorded line and obtain permission to continue recording the call.

The open proceeds with explaining the reason for the call including naming the current credit holder, the initial credit grantor, and stating the amount of the debt.

The open then continues with requesting payment in full by asking the magic question of something similar to: "This amount is due and payable in full. What are your intentions about paying this bill in full?" or "This amount is due and payable in full. Which method of payment do you want to use to pay this amount in full?"

Stating the question in this particular way gets immediately to the heart of the problem and puts the onus directly on the debtor to explain what he intends to do about paying the bill or choose a payment method to pay the amount due.

The open ends with a **<u>PSYCHOLOGICAL PAUSE</u>**. Ask whether or how the debtor wants to pay the debt in full and then SHUT UP! Silence is often a powerful tool and the psychological pause at this point in the initial collection call can be the most powerful part of a successful initial collection call.

Don't waste the opportunity to use this powerful tool of a psychological pause. Make the demand for payment in full and SHUT UP!

The debtor will then be thinking of a reply and will probably tell you next some vital information about how you can proceed to collect the balance due. Remember, the most important part of the initial collection call is to listen to the consumer. Do it.

The Factual Assessment

Once the opening of the collection call has been completed, either one of three things is going to occur.

- Preferably, the debtor may volunteer to immediately pay the bill using a credit card or check over the phone or some other same day payment method such as Western Union.
- More likely, however, the debtor is going to discuss a variety of reasons why the debtor should not have to pay the debt or why he is not able pay the debt at the time.
- The third possibility is that the debtor will dispute some or all of the debt.

Only a Few Things Can Stop a Collection Call

Other than a true breach of warranty claim that would invalidate the sale of the goods or services, there are only few things that should stop a debt collector from pursuing a case. These few "stoppers" are:

- The debtor has died and no estate or other person is responsible for paying the debtor's debts.
- The debtor has filed a bankruptcy and received an order discharging the debt or the automatic stay in a bankruptcy case prevents further collection activity until the bankruptcy is resolved.
- The debtor is currently represented by an attorney-at-law for the particular debt or generally for all of the debtor's debts.
- The debtor contends that he or she is a victim of fraud or identity theft.

If a debt collector is going to pursue collection of an account in the face of any of these obstacles, then certain procedures must be followed in each case. None of these procedures are mandatory if the debt collector is going to simply move on to the next account, but not doing them because it is easier to move on may result in leaving money on the table that could otherwise have been collected.

If the debtor has died, then the debt collector should obtain the date, city, county, and state of death; ask if there is or was a will that is being or has been probated; and, if so, obtain the name, address, and phone number of the executor or administrator of the probate estate.

If the debtor has filed for bankruptcy since the time of the delinquency of the particular account being collected and the current call is the first that the debt collector has learned of it (if the debt collector knew of the bankruptcy, then the automatic stay would prohibit the call), then the debt collector should obtain the name, address, and phone number of the attorney representing the debtor on the bankruptcy; the date on which the bankruptcy was filed, the bankruptcy court in which the bankruptcy was filed, the bankruptcy is still pending, then the date for filing a proof of claim for the amount of debt in the bankruptcy. If a debt collector finds out from a third party that the consumer is a debtor in bankruptcy, then further contact to the consumer may violate the automatic stay that debtors obtain with the filing of the bankruptcy. Therefore, either PACER or another bankruptcy reporting service should be used to obtain the bankruptcy contact information.

If the debtor claims that he or she is represented by an attorney-at-law, then the debt collector should obtain the name, address, and phone number of the attorney and contact him or her.

If the debtor claims to be a victim of identity theft, the debt collector should verify the debtor's demographics and social security number, determine whether a criminal complaint has been filed, and explain that the agency will be sending an Identity Theft/Fraud Affidavit that the debtor will have to complete and return in order to have the account handled accordingly.

Obtaining the Facts

If the debtor is not dead, has not filed for bankruptcy, and still has not volunteered to clear the balance due, then the debtor will probably want either to obtain an extension in which to work out a payment plan or to dispute the debt.

Regardless of whether the debtor wants to obtain an extension of time or to dispute the debt, the response of the debt collector should almost always be to stress the urgency of the matter and lead into a detailed factual assessment of the account by saying something to the effect of:

"I can get your case off of the computer's schedule to review it for supervised handling if you will help me fill out an extension form for you." (Note the use of *quid pro quo*, this for that.)

The debt collector should then ask the following questions or confirm the following information in the following order of importance.

- What is your
 - o Current home address,
 - o Social security number,

- Date of birth,
- o Current place of employment
- Work phone number,
- Cell phone number and
- o Email address?
- If you have a spouse, what is your spouse's
 - Social security number,
 - Date of birth
 - Current place of employment,
 - Work phone number,
 - Cell phone number, and
 - o Email address?
- What is your average monthly income?
- If you have a spouse, what is your spouse's average monthly income?
- How much is your house payment each month?
- Do you own any real estate other than your house?
- Do you own any stocks, bonds, retirement accounts or investments?
- How much are your car payments?
- How much are your credit card payments each month?
- How much are your other loan payments each month?
- Do you owe any amounts to any friends or family members?
- Can you borrow any amounts from any friends or family members?
- Do you have any judgments or garnishments against you?
- Do you know that your failure to pay this bill may be considered to be a willful and deliberate attempt to evade this debt and could result in a lawsuit and judgment being filed against you? (Note that this wording is not a threat of a lawsuit, which may violate the FDCPA in some circumstances, but only the suggestion of the possibility.)

All of these questions are designed to do the following things:

- Provide current demographic and financial information
- Discover assets and sources of money for payment of the balance due
- Impress on the debtor that this is a serious matter that will not go away and will end in a lawsuit and judgment being filed against the debtor if he or she does not cooperate.

If the account balance is small, the debtor may object to having to answer all of the questions over such a small amount of money. The response to such a stall should always be, "You are exactly right. Why don't we just skip all of this and take care of this small balance right now. What form of payment do you want to use to do that? Check by phone or credit card?" If the debtor doesn't volunteer payment, then just go right back into the script of asking the questions.

After having obtained all of this information, the debt collector then moves to the third part of the initial collection call, the dun.

The Dun

The dun has two parts.

- Determining the problem of why the debtor has not already paid the debtor's bill.
- Attempting to find a solution that allows the debtor to pay the bill according to a payment plan that delivers the most amount of money in the shortest amount of time.

During the dun, the debt collector uses the information just obtained to convince the debtor that the debtor has resources available with which the debtor can quickly pay the balance in full.

Examples of financial resources include, but are not limited to:

- Obtaining an equity loan or refinancing of a house
- Obtaining an easy finance loan using a car or other asset as collateral
- Cashing in the savings bonds that the debtor's grandmother sent for a birthday present
- Whatever else comes up in the factual assessment

Regardless of what the financial resource is, the debt collector should, in a professional and non-harassing, non-oppressive, non-abusive way, discuss all possible financial resources and continue to finish the discussion of each alternative with "and then you can use that money to pay this balance in full. That would help you, right?"

Examples of duns using information obtained from the factual assessment include:

Home Equity Loan Scenario

Home equity loans are a common way to pay off debts. Consumers are usually reticent, however, to use them. The usual dunning suggestion and conversation goes as follows:

"You say that you are paying a house note. One of the benefits of home ownership is being able to borrow against the equity in your home. You could take out a home equity loan and use the money to pay this balance in full. That would help you, right?"

"I don't want to do that now."

Assume there is equity available, stress the urgency of the matter and restate the suggestion. "Mister Jones, this is a significant balance that is due and payable now and your home equity may be a good resource to manage to handle this matter and any other debts that you need to pay. Interest rates are not always going to be this low and it may be a good time to refinance. Besides, it would probably be better to use a home equity loan in a controlled fashion like this now than to have to do something in an uncontrolled manner in the future."

Car Loan Scenario

The car loan scenario goes the same way as the home equity loan scenario, except that the debt collector recommends using equity in the debtor's car instead of equity in the debtor's home.

Personal Loan or Credit Card Advance Scenarios

The personal loan or credit card loan scenarios work essentially the same way as the home and car loan scenarios except that no assets are pledged.

"Mister Jones, you said that you have excellent credit and I am sure that you would like to protect that credit rating. Is there any reason why you can't get a bank, finance company, or credit card loan in order to pay this amount in full so that we don't have to take any further collection efforts on this account?"

The debtor may respond with some dodge like "I save my credit lines for emergencies."

If so, then respond, "Well, Mister Jones, this seems to be one of those emergency times. Don't you think that it would be better to handle this matter in a controlled fashion by getting a loan than to have any future things that might occur about this matter come in an uncontrolled fashion? What credit card number would you like to do to handle this today?"

The Close

The dun concludes and segues into the close. During the close, you should document the account file while still on the phone with the consumer, formulate and finalize a payment plan, and obtain a repetition of a promise from the debtor to adhere to a payment plan to clear the balance in full by a date certain.

Follow-up

There is a lot more that goes into the parts of the initial collection call (the open, the factual assessment, the negotiation, the dun and the close) depending on the circumstances and what actually happens during the call. Following the close, however, the case is then assigned an appropriate disposition status and scheduled in the case management system for appropriate follow-up. How much follow-up will be needed is also based on the facts and circumstances and subsequent history of each case.

Broken Promises, Refusals to Pay, and Lawsuits

Assuming that the promised payment plan is kept, not much further action occurs as the case proceeds to resolution. If a promise is broken, then the collector may have to contact the debtor again to renegotiate the payment plan.

Some broken promises can never be remade again. If the debt collector cannot reestablish a satisfactory voluntary resolution, a supervisor may have take over the account or pass the account along to either a more persuasive debt collector.

Often, promises cannot be remade or a consumer may simply refuse to pay a just debt. When all else fails, the next level of collection activity may be to have someone review the case and, if appropriate, refer it to a lawyer for filing a lawsuit.

If the case meets the criteria, a lawyer licensed in the debtor's jurisdiction will produce the appropriate legal filings, signed them, attached to the filing fee and costs check, and file a lawsuit in the court with appropriate jurisdiction over the debtor and obtain a judgment in the amount of the debt.

Once a lawsuit gets filed in a matter, most debtors realize that they have reached the endpoint of their payment avoidance maneuvers and they either pay the balance in full or come to some mutually agreeable compromise. If not, then a judgment is taken against the debtor and execution occurs by attachment of whatever assets are available occurs.

Section 5.5: Leaving Messages for Consumer Debtors

Collectors participants calling consumer debtors have long struggled with many operational questions. One such question is whether to leave a message with a third party or on an answering machine for an unavailable debtor to call the collector back.

The primary issues involved in the "phone message" question are three competing requirements of the FDCPA. Section 805(b) prohibits almost all communications with a third party in connection with the collection of a debt. Section 806(6) prohibits the placement of telephone calls without meaningful disclosure of the caller's identity. Finally, Section 807(11) requires any initial communication with a debtor that is oral to include the "mini-Miranda warning" and disclose that a debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.

The question not-so-succinctly put is "When an initial attempt to communicate with a debtor is by telephone and the debtor is unavailable, how can a collector leave a message that meaningfully identifies the caller's identity, discloses that the debt collector is attempting to collect a debt, and still does not communicate with a third party in connection with the collection of the debt?

Let's first look at how a third party disclosure might occur. Obviously, leaving a live message with a third party who is not the consumer or the consumer's attorney, spouse, parent (if the consumer is a minor), guardian, executor, or administrator violates FDCPA Section 805(b). In addition, many states prohibit communication with a debtor's spouse,

so even leaving a message that is otherwise fully FDCPA compliant with a spouse may still violate state law.

The real "third-party message" possibility arises when a collector leaves a message on an answering machine. No collector can predict with certainty that a third party is not going to hear such a message. In many cases, the collector cannot be absolutely sure whether he or she has actually reached the consumer's answering machine. How many times have you heard just the message, "Please leave a message after the beep." Even an automated message that says, "You have reached [whatever number], please leave a message," is no guarantee that you have reached the consumer's machine.

A few federal district courts in California have weighed meaningful disclosure of a caller's identity and mini-Miranda issues against the possibility of a third party issue. These courts have come down in favor of fully disclosing the caller's identity and leaving the mini-Miranda on the answering machine as opposed to worrying about what the courts consider to be the remote possibility that a third party may listen to the message supposedly left on the consumer's answering machine in the consumer's home.

These court decisions are very limited to their own facts and are only binding precedent in the same district courts in which they were issued. Until the issue is considered and decided in more courts in more states, depending on these limited California rulings to support the idea of leaving detailed messages including the full name of the caller and the caller's company and the mini-Miranda may be a dangerous policy.

Until more courts in more states address and decide this issue, there will be no safe answer to the question of "What is the best telephone message to leave for an unavailable consumer?" Without more precedents in more jurisdictions, the safest answer may be that "the best message may be the one that you leave unsaid." If no message is left on an answering machine, then no contents of a message will be available to serve as grounds for a failure to include meaningful disclosure of the caller's identity or the mini-Miranda.

Another alternative is to treat all calls made as attempts to locate a consumer until the consumer is correctly identified as the answerer of the call. The specific ways to do this would be to establish a policy to treat all calls as being an attempt to obtain location information on the consumer until a live answer is obtained and the identity of the person answering the phone is determined to be correct consumer and disclose no more than allowed under FDCPA Section 804 in a message that states, "My name is Caller's Name and I am confirming location information concerning Consumer's Name. Please call me at 555-555-5555 ext 5."

This would keep you within the "location" exception of Section 806(6), which would allow placing phone calls without meaningful disclosure of the caller's identity and support the contention that such a message left was not yet a communication with the consumer such that the 809 mini-Miranda disclosures would not yet apply.

There is no guarantee, however, that such an approach will succeed to overcome the precedents in California that opine that meaningful disclosure of the caller's identity and

mini-Miranda are required in telephone messages. It is unclear, however, if the calls in those California cases were made after the identity of the owner of the phone number being called was indeed the consumer. Therefore, an argument could at least be made that, until the owner of the number being called is identified as the consumer, those precedents in California would apply.

There are no easy, hard and fast answers to the telephone message question. The ACA is working diligently with the Congress and with the FTC to resolve this industry-wide problem. In August of this year, the ACA made a formal written request for an advisory opinion from the FTC, urging the Commission to conclude that the mini-Miranda and disclosure of the caller's identity as a collector is not required under the law.

Until Congress, the FTC, or more state or federal courts make the interpretation of the law more clear, other than using the "location message" policy discussed above, it may well be that the best telephone message may be the one you leave unsaid.

Section 5.6:

Section 5.7: Coming Up Next

Now that we have covered the details of making initial collection calls, let's look at ways to make them more effectively.

Chapter 6: Making More Effective Collection Calls

In this chapter, you will:

- Master some basic negotiation skills
- Review the possible results of an initial collection call
- Learn some additional effective collection call techniques
- Discuss a collector's multitasking duties during a collection call
- Practice overcoming stalls and objections

Section 6.1: Practice Makes Perfect

An effective debt collector will soon realize that making collection calls is part art and part science. Both art and science are capable of being taught and learned.

The keys to a successful career as a debt collector are:

- Understanding the concepts
- Applying the concepts, and
- Practice, practice, practice

Prior to discussing what will make collection calls more effective, let's discuss some negotiation tips and then begin again with the end in mind.

Section 6.2: Negotiations: Seven Rules for Succesful Collections

Any time you to want someone to do something for you -- buy your product, pay their bill, whatever – you have to negotiate. Regardless of which side of a negotiation you are on, each party to a transaction has a chance to strategically challenge the other, to make an offer or a counteroffer, and to whine and moan, all in order to get the other party to give a little. The collections business is nothing but constant negotiations.

If you are like most people, the very word negotiation probably makes you think "pain in the neck," more than "opportunity to excel." After all, merely exchanging pleasantries and taking less or paying more than you want is far more pleasant than dickering at length with the other party. Nonetheless, if you know what you're doing and approach things correctly, you might actually begin to relish the constant parry and thrust of the collections business. Negotiating is not only satisfying; it can also make you money.

Working a collections queue isn't only a great time to conjure your inner Donald and paint your rendition of the "Art of the Deal." The negotiating-skills that you practice on the job can also come in handy in other roles at work and even around the house. (Ever haggle with a teenager about cleaning the kitchen?)

To help you through your next collection transaction, here are seven rules for successful negotiating. They won't tell you what you're going to settle your next account for --that's what collections negotiating is all about -- but they will put you on an equal footing with the person on the other end of the line.

Stake your claim, but be willing to shave it if you have to.

Few things are ever an either/or proposition. Good negotiating isn't about playing hardball by making your first offer and then sticking to it. It's about making an offer and compromising when you have to. Effective negotiating requires many things to do well. Two of the most important things it takes to succeed in negotiations are a strong desire to reach a mutually satisfactory solution and the creativity to find one.

The things that a debt collector has to give and take in a collection effort are fairly limited. All that is present is time, money, a possible and possibly adverse credit report, a possible lawsuit, and the debt collector's nagging efforts. Creatively mixing and matching the pluses and minuses of those five things is what successful collection negotiations is all about.

Good negotiators never bid against themselves. They stake their claim and then wait for a counteroffer before shaving their own position. Therefore, an effective debt collector should stake a claim by requesting payment in full (PIF) for the client's just debt and then wait silently for the debtor's response. A debt collector knows that he or she may have to give just a little in order to keep the negotions moving ("I can give you two percent off for payment today or a two month payment plan. That would help you, right?"), but he or she should not give it too willingly.

Know what you can part with,-then part with it hard.

A debt collector should always keep in mind that he or she is looking to recover the most money in the shortest amount of time. Collectors should never give anything up for free. So whenever one gives up either time or money, two of the very limited commodities available in a collection transaction, he or she had better be getting some of the other commodity back in return.

One thing that most debt collection agencies let collectors give away for an instant payment in full is a ten percent discount. That does not mean, however, that a good debt collector gives up the ten percent as his first offer. In fact, its should be the last arrow in her quiver that she shoots just as the debtor is about to begrudgingly agree to a one-year PIF payment plan.

A crafty collector may convert a mid-term plan into an immediate settlement in full by saying, "You know, I can give you a ten percent discount on this if you agree to pay it all today instead of stretching it out for a year with us. A ten percent discount would help you, right? Maybe you can put it on a credit card and pay the credit card off over the year instead of us.? Which credit card would you like to use for that?"

Know what's pushing the other side.

It is important for a debt collector to know what, if anything, is pushing a consumer to want to settle an account. Knowing what is pushing the otherside will help the debt collector control the negotiations.

If the debtor is initiating a contact with a collection agency, then that consumer usually has something pushing him to get his credit report or title to an asset cleared up. He has a reason to proceed speedily, so use his pressure to your advantage. If a consumer wants to move on with his life or a homeowner wants to sell fast because she already closed on another house, then-that person will pay to get things resolved quickly in order to sell his home.Use this leverage to push for a payment in full offer, because time being of the essence is now on vour side for a change.

A little empathy goes a long way.

Being a debt collector puts you in a reluctant relationship with a consumer. You each obviously arrive at your meeting point in life with differing viewpoints about the debtor's account, but that doesn't mean you have to be enemies. You have to build a rapport with the consumer. The key is to make sure the person views you as an ally.

If a consumer appears angry that you are contacting her, let her know that you recognize she's upset. Then the lady says, "You're darned tootin' I'm upset!" and all of a sudden you've got her agreeing with you. Then you can slip some "Feel, Felt, Found" in on her, "Look, I know how you feel. I would be angry too. In fact, someone called me once on an old piece of business and I thought it was a real pain in the neck and I let her know about it. But, you know what I found out. She wasn't calling me because she wanted to. She was just doing her job so that she could feed her family. Just like you probably do and just like I am doing right now. So, your account is for a hundred and twenty bucks, what method of payment do you want to use to take care of this balance right now?"

By empathizing with her, you will (one hopes) reduce any vituperative tendencies on her part. Once she's not out to get you, you stand a better chance of preserving an amicable atmosphere-although you should always still ask for all of the money.

Emotions kill negotiations.

A collections attempt is so fraught with tension that it can easily escalate into a shouting match. Problems that have nothing to do with how a debt collector is handling an account negotiation have a way of stirring emotions to the point where a productive conversation escalates into a heated argument. One person starts sniping at the other and then it becomes a free for all. Suddenly everyone is arguing about personalities rather than issues.

Force yourself to maintain a certain level of detachment. You don't want to become so emotionally involved in a negotiation that it hurts vour ability to see it clearly. When you sense that feeling coming on, briefly disengage. "How, exactly?" you may ask: You literally have to say, "Hold on a second while I look something up that may help us settle your account."

Then shut up for a moment, close you eyes for a five second breather and offer to give up something to push the negotiations back on to an even keel. For example, "Mister Debtor, I see that your account is three years old, I can give you a one time only one percent discount for each of those years that would bring this \$1,200 account down thirty-six bucks, which is a good steak dinner for you and your wife. That would help you, right? What form of payment do you want to use for the eleven sixty-four that's left?"

Negotiations are like poker, everyone's assumed to be lying and no one seems to mind.

As in any negotiation, both sides of a collection relationship often recognize that they are, in fact, playing each other.Playing anything or anyone usually involves two things: strategy and, sometimes, a good deal of acting. If you don't recognize that, you could be tripped up when a consumer tells a white lie, which, let's face it, he probably will. Just like the other player in poker, consumers tend to act strongest when they are weakest.

When a consumer says, "I can't pay more than ten dollars a month early in the call," it's probably not true. Meet that statement by asking the person to let you help figure out a way to get around it. You're not calling him a liar; you're simply telling him that you recognize he is playing the same game you are-and you're not going to accept "no" without pushing back a little.

If a consumer quotes a ridiculously low settlement figure or payment plan and says it's the best she can do, say something like "That's just not acceptable, Mrs. Debtor, before I have to give this account up to my supervisor for him to handle, maybe we should take one more walk around the block here to make sure we're not underestimating how good

your resources are." You'll be gently sending the message that you want a better payment plan without accusing her of tryingto welch on her debt.

Devise a backup plan that you could live with.

Always enter a negotiation with optimism, believing a deal will be struck. But what happens if you can't convince someone to accept a decent payment plan? Devise what is your "best alternative" to a negotiated agreement, which is usually going to be passing the file up to your supervisor for further review and further collection activities. When the debtor asks what "further review and collection activities" means, simply say "I don't know what they will ultimately decide to do with you account, Mister Debtor, but usually it's not as good for you as coming to some mutually acceptable payment terms with me."

The "best alternative" is essentially a backup plan that allows you at least to give the impression that you have other options. If you haven't thought through your best alternative to an agreement and if you don't let the debtor know early on that there are other less pleasant options than dealing with you, you'll give the impression that even though you're unhappy with a bad offer from the debtor you are not so unhappy that you'll walk away. Let the debtor know you're prepared to proceed with your backup plan, but stop short of actually giving up on your preferred choice. That should get your opponent back to the table, and then you can go back to Principle No. 1: Stake your claim, but be willing to shave it a little if you have to.

Section 6.3: Possible Results of an Initial Collection Call

Consider what a debt collector wants to accomplish on an initial collection call. There are several possible ways that such a call can turn out.

In order of preference, the possibilities are:

- Payment in full (PIF) immediately by using the "fast money" methods of credit card or check by phone or "not quite as fast" payment methods that can be received on the same day, such as Western Union or other types of payment centers.
- Settlement in full (SIF) immediately for a slightly lesser amount using fast or not quite as fast monies.
- PIF payment plan with payments on one or more dates in the future using a payment plan including automatic credit card payments, post dated checks by phone or post dated checks sent by mail.
- SIF payment plan with payments on one or more dates in the future for a slightly lesser amount using automatic credit card payments, post dated checks by phone or post dated checks sent by mail.
- Promises for a PIF or SIF over a period of time by the debtor sending in monthly checks

- Dispute about the account with a willingness to continue discussions
- Refusal to pay
- Request to cease and desist further contact

Obviously, a debt collector would prefer the first of these possibilities. To ensure that such a successful result comes to pass, a debt collector should master a variety of effective collection call techniques.

Section 6.4: Effective Collection Call Techniques

Make the Debtor Work for You

From as early in the call as possible, make the debtor begin to take concrete actions toward paying the account. The easiest way to do this is to have the debtor start off by getting a pen and a piece of paper in order to "write down some important information" that the collector intends to give the debtor.

Trust, but Verify

When the collector gives the debtor information to write down, he or she needs to verify that the debtor is not lying about having the pen and paper ready and that the debtor is in fact doing what he or she is supposed to be doing. The way to do this is to give a large chunk of information to the debtor and then ask the debtor to read it back. Asking for the read back in the reverse order of giving it is even more effective at being sure that the debtor is not just storing the data in short term memory and recalling it only to be discarding it in the near future.

Use Quid Pro Quo (This for That)

A good collector will always maintain control of the call, control of the negotiations, and control of the resolution of the matter. Therefore, every time that a collector gives in on any point, he or she needs to make sure that the debtor gives up something as well.

For example, if the collector is agreeing to enter into a payment plan with the consumer, in return for allowing the plan, the collector may want to demand an initial payment that is larger than the largest future payment: The collector might state this as, "In order for me to approve you for monthly payments of [x] dollars per month, you will need to pay [x+50] dollars as an initial payment."

Another example, in case a payment plan cannot include a front end loaded payment, is for the collector to impose a requirement for obtaining postdated checks or, even better, a series of automated check handling (ACH or EFT) transactions. The collector may state this as, "In order for me to approve the balance to be split into [x] payments, you will need to set up those payments in the form of pre-dated checks, checks by phone, or credit card charges by phone."

An effective debt collector will use quid pro quo effectively. For example, to get the most information out of a consumer, an effective debt collector will tell the debtor that obtaining approval of an extension of time or payment terms can only be made for accounts that have full contact and financial information.

Remember That Time Is Of the Essence

Both the debt collector and the debtor need to realize that time is of the essence in managing a debt collection case. An effective debt collector will keep the urgency of the matter in the forefront of the debt collector's dealings with the debtor at all times.

Time is of the essence for the debt collector, because, once the debt collector takes a case, it is that debt collector's responsibility to contact the debtor and negotiate and complete a payment plan as quickly as possible. A debt collector's supervisor should be constantly reviewing the debt collector's entire caseload to be sure that no cases are being allowed to take longer than necessary without good reason. If the debt collector fails to move a case along in a timely manner, then the debt collector's supervisor may have to take over a case directly or assign it to another, more effective, debt collector. This reassignment will directly affect the initial debt collector's retention and advancement options.

Because time is of the essence for the debt collector, he or she should constantly remind the debtor that time is of the essence for the debtor as well to avoid supervisory action on the case. Supervisory action should normally only lead to more stringent settlement possibilities being imposed on the debtor and possible referral of the case for review for possible legal action.

Properly and effectively keeping a sense of urgency in front of the debtor will push the debtor toward agreeing to and complying with a payment plan sooner rather than later.

Use the Fastest Payment Methods Possible

When negotiating for payment, work to get the fastest payment method possible. These are, in order of preference: credit card by phone, debit card by phone, automated check handling by phone, Western Union (or similar same day payment methods), check by overnight carrier, check by Express Mail, check by registered mail, check by first class mail.

Make the Debtor Call Back, Not the Other Way Around

An effective debt collector will maintain better control of an account and the account's debtor by obtaining from the debtor a promise to call the collector back at a particular time. For example, if a debtor promises to send a payment on at a future time, the debt collector should make the debtor also promise to call back immediately after sending payment with the money order, check number, certified mail number, overnight mail number, or Western Union number.

Make Prompt Follow-up

If a debtor promises to call on the following Tuesday at 3:00 p.m., then the debt collector should set a timed reminder for that date and time. If the debtor does not call by the

appropriate date and time, the timed reminder should make the debt collector call the debtor at 3:01 p.m. A debt collector should do so and hold the debtor accountable for his or her failure to keep the promise.

Mentioning Further Collection Efforts Appropriately

The FDCPA prohibits a debt collector from threatening to take actions that he or she cannot legally and does not really intend to take. Therefore, a debt collector must be very careful about mentioning things like taking additional collection efforts, reporting accounts to credit reporting agencies, taking legal action (or even mentioning the word "action" according to recent cases) or other similar things.

Nonetheless, the suggestion of further collection efforts such as reporting account delinquencies to a consumer reporting agency, referring the account to a supervisor or for pre-legal review are significant levers to use and buttons to push to move a reluctant consumer closer to settlement. The best way to use these issues is for a debt collector to only generally refer to "making additional collection efforts" or "taking additional collection activity" concerning the account.

A debt collector should almost never use the term "further action" when speaking with a debtor. The work "action" too closely connotes legal action. If legal action is not being considered, then the word "action" should not be used.

If the debtor asks something more particular about what "further efforts" might include, such as whether the account will be reported to a consumer reporting agency, a debt collector should neither dismiss nor foreclose any possibility. The best response is to state that decisions about credit reporting and other further collection efforts are made by more senior account managers and simply impress the idea that it is always important for a consumer to protect the debtor's credit report by paying the debtor's debts as promised.

Use Open Ended Questions

A major part of making successful collection calls is understanding that quite often it is not so much what you say that counts, but rather how you say it. An effective debt collector will ask open-ended questions rather than finite questions.

For example, an effective debt collector will not ask questions that can be dispatched with by using a "yes" or "no" answer. Instead of asking "do you have a checking account," which will often be denied by a debtor, it is more effective to ask "What type of checking account do you have, regular checking or some type of a special checking account?" Assuming the existence of a checking account in the question makes it more difficult for the debtor to quickly lie and say that the debtor doesn't have a checking account.

Listen To the Consumer

The most effective debt collectors are the most effective communicators. The most effective communicators are the most effective listeners. To be a highly effective debt collector, listen attentively to what the debtor says throughout all calls.

Give the debtor ample opportunity to explain why the he or she has not paid the account being collected according to the agreed upon terms. Many times, the debtor is uncomfortable about not having paid the bill. Most of the time, the debtor's discomfort and anxiety can be used to push the situation toward an effective resolution.

Relate to the debtor on the debtor's level. Listen to what the debtor is saying and how the debtor is saying it. Talk to the debtor in the same tone and using a similar language level if possible. If the tone turns angry, however, maintain control of the anger and control of the call.

Section 6.5: Multitasking During a Collection Call

As a debt collector proceeds through an initial collection call, he or she will be required to keep many things simultaneously in mind and perform several ministerial tasks.

Documentation

Documentation of the collection call is an important task for several reasons. These reasons include:

- Being able to recall what it is that was said and done on every account. You cannot trust your memory to keep two hundred calls a day straight for months on end.
- To allow a supervisor or other debt collector to know the account's detailed history as well should they have to take over an account or need to review the account for quality assurance purposes.
- To prove what was said and done, should any consumer make any claims that something was done incorrectly. The written account records will often be the only proof that can be used at trial. Therefore, if you don't write it in the record, it did not happen.

With so many calls being made in a day, long voluminous account notes would consume too much time. When documenting each call, use the following guidelines:

- Document the account call notes as the call is happening.
- Be accurate
- Be brief
- Use only approved abbreviations
- Enter only, but all of, the pertinent information

SOAP Notes

Event notes should briefly describe four things. What was said by both the debt collector and whoever was on the other end of the call, what was observed by the debt collector during the call, what actions the debt collector took, and what is the debt collector's plan to obtain payment in full. The four elements, Said, Observed, Actions, and Plan, can easily be remembered and used by just remembering that accounts get cleaned up by using SOAP.

Use Abbreviations, But Only Approved Abbreviations

98% of collections work involves the same few tasks being done over and over again. Without using abbreviations, the documentation of each account becomes both very long to enter and, later, very long to read. Therefore, the majority of the documentation of the tasks performed could and should be entered using a substantial number of abbreviations. For the sake of consistency, readability, and comprehension, however, only standard, approved abbreviations should be used.

A list of suggested abbreviations are set forth below:

Approved Abbreviations

ACH – Automated Check Handling	IDC – Identified Consumer
AP – Accounts Payable	IDS– Identified Self
ATP – Agreed To Pay	LM – Left Message
ATS – Agreed To Send	LI – Location Information
C - Consumer	NI – Not In
CB – Call back	OC – Overnight Courier
CC – Credit Card	OSA – Obtained Supervisor
CRA – Consumer reporting agency	Approval
CRV – Consumer Requested	P – Pitched
Verification	PIF – Paid In Full
DC – Debt Collector	PBM – Personal Business Matter
Dept. – Department	POD – Particulars of Debt
DK – Doesn't Know	POE – Place of Employment
EPOD – Explained Particulars of	PP – Payment Plan
Debt	Rcd – received
GMM – Gave Mini-Miranda	RCR – Requested Credit Report
Statement	RLI – Requested Location Info
HU – Hung Up	Rvd – Reviewed

Rqd - Requested	TT – Talked To (used when talked to
Sec. – Secretary	Consumer)
Sp Spouse	TTL – Trying To Locate
SIF – Settled In Full	TW – Talked With (Third Party)
TAM – Take A Message	UIF – Unidentified Female
THAND – Told "Have a Nice Day"	UIM – Unidentified Male

Examples of Standard Documentation Notes

Reviewing a few examples of well documented scenarios will help a collector understand what a properly abbreviated, but complete, event note should look like.

Verification Request Scenario:

Debt collector identifies the Consumer, identifies the debt collector as a debt collector, gives the Mini-Miranda, and explains the particulars of the debt. The debtor requests verification of the debt immediately after hearing the particulars of the debt described by the Debt collector. The debt collector agrees to have the verification sent and tells the debtor "Have a nice day."

The documentation for the event will, properly abbreviated, look like this:

IDC, IDS as DC, GMM, EPOD, CRV, I ATS, and THAND.

Payment by Automated Check Handling Scenario

Debt collector identifies the Consumer, identifies the debt collector as a debt collector, gives the Mini-Miranda, and explains the particulars of the debt and pitches. The debtor agrees to pay the debt using automated check handling. The debt collector takes the ACH information, obtains immediate Supervisor approval of the payment, thanks the debtor and tells the debtor "Have a nice day.

The documentation for the event will, properly abbreviated, look like this:

IDC, IDS as DC, GMM, EPOD, P. C ATP by ACH. Entered ACH info, OSA, and THAND.

Left Message Scenario

Debt collector talks with an unidentified female, identifies the debt collector as trying to locate the Consumer. The unidentified asks why the debt collector is trying to locate the debtor and the debt collector responds that it is a personal business matter. The unidentified female says that the debtor is not in and asks if the debt collector wants to leave a message for the Consumer. The debt collector asks if the unidentified female knows the debtor's location information. The unidentified female only verifies the home phone number, refuses to confirm the home address, and said she doesn't know the debtor's place of employment. The debt collector leaves the message and tells the

unidentified female to "Have a nice day." The debt collector thinks that the unidentified female is actually the debtor and plans to call back tomorrow.

The documentation for the event will, properly abbreviated, look like this:

TW UIF. IDS as TTL C. UIF said C was NI and offered to TAM. RLI. UIF only verified the phone number. Refused to confirm home address. Said she DK C's POE. LM. THAND. I think UIF is C, because she said "Yeah," right before she asked, "Why do you want her?" Plan to CB until I reach C.

Partial Payment Plan Scenario

Debt collector identifies the Consumer, identifies the debt collector as a debt collector, gives the Mini-Miranda, and explains the particulars of the debt and pitches. The debtor states that he doesn't have any money with which to pay the bill. The debt collector asks for information and negotiates hard, finally getting the debtor to agree to pay the debt using a series of postdated checks to mailed the next day.. The debt collector inputs the payment plan information, obtains immediate Supervisor approval of the payment, thanks the debtor and bids the debtor to "Have a nice day." The debt collector plans, however, to review the account in 60 days to attempt an upgrade of the payment plan to PIF.

The documentation for the event will, properly abbreviated, look like this:

IDC, IDS as DC, GMM, EPOD, P. C said he had no \$ to pay the bill. Rvd C's POE and Sp's POE info. Rvd Assets. No car, house, or savings. C ATP w/PP. 10% check today and 9 more PDC's via OC. Entered PP info, OSA, and THAND. Plan to watch keeping promise and try to upgrade in 60 days.

Update the Debtor's Information

Confirm the debtor's demographics such as address, telephone numbers, etc. at the beginning of the initial collection call and at every other opportunity that arises thereafter.

Press for PIF, Settle for a Timed Liquidation Plan

Remember that the first rule of successful negotiations is to stake a claim and then be willing to shave it some. A debt collector should initially PRESS HARD FOR A PIF IN ONE PAYMENT. Only when the initial demand has been exhaustively pursued and fails should the debt collector begin to shave the demand.

If the debt collector cannot get a PIF IN 1, then he or she should continue to press hard for a PIF IN 2. ("Because you don't have all of the money to take care of this debt completely today, I can let you pay half of it today and half of it on your next payday. That would help you, right?")

If the debt collector cannot get a PIF IN 2, then he or she should press hard for a PIF IN 3.

If the debt collector cannot get a PIF IN 3, then and only then the debt collector should suggest getting a good faith down payment of intent and the balance in full in as few payments as possible. Preferably a payment plan should include no more than five payments. Ideally, the payment plan should use automatic transactions from checking or credit card accounts. If the plan runs long, like a PIF IN 10, then the agreement should include the right for the debt collector to recontact the debtor in ninety days and see if their financial situation has changed and accelerate the payments.

The question always arises, how much is a "good faith" down payment of intent. Once again, stake your claim and be willing to shave it only if need be.

- Start at 30% of balance.
- Drop to 20% if you have to.
- Fallback to 10%, with a minimum \$50 payment, but only if the debtor can prove that they real financial hardships.

Section 6.6: Overcoming Stalls and Objections

Dealing With "Who's Calling?" Stalls

A common problem that occurs in collection calls is that the debtor does not like to identify himself or herself, because they don't want to be confronted by debt collectors. Therefore, when a debt collector starts a collection call with an opening like, "Hello, Carl?", the crafty consumer will respond with something to the effect of "WellIlll, who wants to know?"

Before discussing this stall further, understand that, among many other things which we shall study in much detail later, the Fair Debt Collection Practices Act (the "FDCPA") does three things in this situation. The FDCPA:

- Prohibits the disclosure of a debt to a third party
- Requires a collector to state that he or she is seeking to confirm or correct location information on a person when seeking consumer location information from a third party
- Requires disclosure of the collector's employer's name when directly requested.

A well-trained, though wrong, collector may feel stymied by this stall, because he or she may be worried about making a prohibited third disclosure of the existence of a debt if the collector is not in fact talking to the consumer. The collector will then often choke and say something like, "Well, I can't tell you why I am calling unless you tell me that you are Carl Consumer."

This initial repartee will then be repeated back and forth several times until the collector finally gives up and hangs up having been defeated by a craftier consumer. There is, however, a better way to handle this.

The most effective way to handle a "who's calling" stall is to treat the person answering the phone as a third party and to treat the call as a consumer location call until the debtor is positively identified. Doing so will allow the conversation to proceed quite differently. The conversation may go like this.

"Hello, Carl?"

"Well, who wants to know?"

"My name is Peter Moreprepared and I am trying to confirm or correct some location information on Carl Consumer. Are you Carl?"

"Well, why do you want to have the information?"

"Because part of my job is to confirm or correct location information on people. Are you Carl?"

"Well, who do you work for, Peter?"

At this point, the debt collector can specifically state the name of the company that he is working for, <u>BUT NO MORE</u>, without violating the FDCPA.

If the company has wisely named itself without including the words "debt," "collection" and similar words that disclose the business the company is in, then the call may go even further. If the company's name does disclose that the call is a debt collection call, then the person answering the call may be less likely to cooperate.

"I work for Generic DCS. Are you Carl or do you know where he works?"

Regardless of whether the name reveals the true reason for the call, however, the debt collector will have safely overcome the "Who's calling?" stall and can usually move on with the rest of the call. If the crafty consumer says, "Well, Carl doesn't talk to debt collectors" or simply says "Carl's not in" or "You've got the wrong number," then the debt collector can still proceed accordingly with the call.

If the party answering the phone behaves well, the debt collector can proceed with identification of the debtor and the rest of the opening of the collection call. If not, then the debt collector can leave a message and call back later. Eventually the debtor is going to weaken and let the call occur.

Telling Stalls from Objections

More often than not, a consumer will either want to stall paying the bill or have some valid objections to paying the debt. The debtor may want to negotiate payment terms that involve less money and a longer amount of time than the debt collector wants.

The debt collector's main objective is to obtain a PIF, payment in full, immediately. When a consumer asks for payment terms, the collector must stay in control of the situation and negotiate the most effective payment plan possible.

Not recognizing and responding to stalls and objections correctly may give the debtor more time and ability to avoid payment in full or may allow the debtor to not give the debt collector the opportunity to fully question the consumer. Being able to tell the difference between stalls and objections and being able to respond to any and all stalls or objections appropriately takes study and practice.

The differences between stalls and objections are:

- Stalls are merely excuses for not paying a debt. Stalls are general invalid reasons why a consumer has not paid his or her debt.
- Objections deal directly with the product or service obtained on credit, a prior billing dispute, or a prior payment dispute. Objections are real reasons why a consumer has not paid a particular debt.

Determining whether a debtor's response is a stall or an objection requires listening skills. Listening allows the debt collector to understand if a specific problem really exists and how to solve that problem.

What is the best way to quickly overcome a stall? By finding points on which the debtor and debt collector can first agree.

These points of agreement may include:

- Did the debtor request the products or services being billed?
- Did the debtor ask for credit terms?
- Did the debtor obtain the products or services being billed?
- Were the products or services what they were supposed to be?
- Did the debtor not pay for the products or services being billed?
- Shouldn't the debtor be responsible for paying for the products and services being billed?
- Doesn't the debtor have the ability to pay the bill?

Once the debt collector gets the debtor agreeing with him or her on one or more of these questions, then the collector can much more easily move on to getting the debtor to agree to a PIF, a SIF, a payment plan, or a promise to get the account paid.

Appeals to Honesty, Pride, or Anxiety

At some point in the negotiation process, the debt collector may have to resort to appealing to the debtor's honesty, pride, or anxiety. These techniques are usually more effective at overcoming stalls than valid objections.

An appeal to the debtor's honesty may be as simple as saying, "Mister Debtor, you seem like an honest person and I am sure that you presented yourself as an honest person when you incurred this debt. Don't you think that the honest thing to do now would be to just pay it and be done with it?"

An appeal to someone's pride may be more directly related to enjoyment of the thing obtained when incurring the debt. For instance, the debt collector may say, "Miss Debtrix, weren't you proud having your friends to dinner cooked in your new oven. Won't you be even more proud, if this account for it is no longer looming over your head?"

An appeal to someone's anxiety is more generally related to the debtor's financial situation itself. A debt collector may say, "Mister Debtor, I'm sure you don't like the stress of collection calls like this, don't you think that it may be best to just stop the anxiety of being in debt by paying this bill?"

Regardless of what methods are used to overcome stalls and objections, an effective debt collector should not stop until the debtor agrees to responsibly handle the account.

Section 6.7: The 10% Discount

Assuming that the client allows it, offering a Ten Percent Discount can be used as a carrot to turn a long term payment plan into an immediate SIF. Do not, however, give up the entire ten percent in one fell swoop. Offer a two percent discount for cash first and work up from there.

Section 6.8: Credit Bartering

One issue that often arises during an initial collection call is, if an account has been reported to a consumer reporting agency, then will the creditor be willing to remove the trade line from the debtor's credit report if he or she settles the account. Removal of a delinquent account from a debtor's credit report in return for payment of the account as opposed to simply reporting the account as paid or settled and closed is often referred to as "credit bartering." Credit bartering may amount to breach of the statutory duty under the Fair Credit Reporting Act to submit only accurate information. Any actions that may be construed as credit bartering should not be taken without first being carefully considered.

Section 6.9: Coming Up Next

Now that you have learning how to make collection calls competently, we next need to learn how to make them compliantly.

Chapter 7: Compliance

In this chapter, you will:

- Review the pertinent provisions of the Fair Debt Collections Practices Act
- Learn about the Fair Credit Reporting Act as amended by the Fair and Accurate Credit Transactions Act
- Generally review many other federal and state laws that may impact debt collection operations.

Any debt collector or agency will find themselves subject to a plethora of legal and operational compliance requirements. While most of the debt collection compliance requirements flow from the federal Fair Debt Collections Practices Act (the "FDCPA"), many other federal, state, and local statutes, regulations, and case law may control various aspects of a debt collection business. When dealing with the various sources of compliance requirements, one must be sure whether a federal law is controlling a specific issue, whether a more stringent state law may control the issue, and whether an even more stringent local law may control the issue.

While a full discussion of the rules of intergovernmental preemption is beyond the scope of this text, the following general rules generally apply. If a federal statute expressly states that no more or less stringent state or local law may control the same issue, then such a statement will usually prevail. If no such statement exists, then a state may usually enact a law that offers more protection to the protected class. For example, while the FDCPA allows speaking with a spouse about a debt, some states have passed laws more strictly limiting communication with a spouse.

Some of the consumers encountered during the debt collection process are "professional debtors." Many times, these particular consumers have studied each and every detail of each and every compliance law. Sometimes, these "professionals" will attempt to trick the debt collector into making a violation of one of those laws for the sole purpose of being able to file a claim for damages.

For these and other reasons, anyone working in any position in a debt collection business should become expert with as many of the compliance requirements of such an operation as is possible.

Section 7.1: Fair Debt Collection Practices Act (the "FDCPA")

Because the FDCPA is so extensively applied to debt collection activities, any debt collector should essentially memorize the entire statute and become very familiar with the positions of the Federal Trade Commission expressed in its Official Commentary to the FDCPA. The statute, the FTC Commentary, and some Practical Pointers are presented section by section and side by side in Appendix A of this book. What follows is a thorough, but still brief, review of the FDCPA. The reader is strongly advised to supplement this discussion with a complete review of Appendix A.

Scope of the FDCPA

Almost all consumer debt collection practices in the United States are controlled by the FDCPA, which is a fairly terse and clearly written federal statute enacted by the United States Congress. The purpose of the FDCPA is to eliminate abusive debt collection practices by debt collectors, to protect debt collectors who refrain from abusive practices from loss of a competitive advantage, and to promote consistent state action to protect consumers. For a company with reasonable business ethics and operational principles, the FDCPA is an ally and not an enemy. It allows a collector to use its best talents and abilities on a level playing field without having to be undermined by less ethical entities.

The FDCPA limits the number, types, timing, and content of "communications" that a "debt collector" may have with a "consumer" "debtor" concerning a "debt" as all of those terms are defined in the act.

- "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.
- "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. There are several exceptions to the term "debt collector," but the only one that normally

become applicable is the one that exempts an actual officer, employee, or extended business office servicer of a creditor while, in the name of the creditor, collecting the debts of such creditor.

As most proposed business opportunities involving delinquent debt do not fall within this singular exception, almost all collection activities of delinquent consumer debt are clearly subject to the limitations contained in the FDCPA.

Debt Collection Practice Limitations of the FDCPA

The debt collection practice limitations of the FDCPA are clearly defined in the statute; These limitations run from the moment the debt collector begins to contact a debtor or discover the whereabouts of the debtor from the debtor or a third party until the final collection, settlement or abandonment of the debt.

When a debt collector seeks to obtain information concerning the whereabouts of the consumer from anyone other than the consumer, the debt collector must, to the extent possible protect the privacy of the consumer by doing the following:

- 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.

Once the consumer's whereabouts have been legally obtained, the FDCPA further limits the communications with the consumer. A debt collector may not communicate with a consumer about the debt under the following conditions:

- at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer, which is assumed to be from 8:00 a.m. until 9:00 p.m. "debtor standard time";
- if the debt collector knows the debtor 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 debtor's place of employment if the debt collector knows or has reason to know that the debtor's employer prohibits the debtor from receiving such communication.

The FDCPA prohibits a debt collector, unless expressly permitted by the debtor or a court of competent jurisdiction, from communicating about the debt with any person other than the debtor except:

- the debtor's spouse,
- the minor debtor's parent,
- the ward debtor's guardian,
- the deceased debtor's executor or administrator,
- the debtor's attorney, but not an "attorney-in-fact",
- a consumer reporting agency,
- the creditor,
- the attorney for the creditor, or
- the attorney for the debt collector.

The FDCPA also limits communications with the debtor after the debtor notifies the debt collector in writing that the debtor refuses to pay the debt or that the debtor wishes the debt collector to cease further communication with the debtor. In such cases, the debt collector shall not communicate further with the debtor, except:

- to advise the debtor that the debt collector's further efforts are being terminated;
- to notify the debtor 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 debtor that the debt collector or creditor intends to invoke a specified remedy.

The specified remedies are usually reporting the debtor to credit reporting agencies or referral of the debt for legal prosecution. When making these notifications after receiving a cease and desist request, the debt collector needs to pay attention to the limiting clause that the remedies that may be invoked are in fact those that are ordinarily invoked by the creditor or debt collector. Hollow threats are actionable under the FDCPA.

The FDCPA further prohibits general harassment or abuse. Several obvious examples of harassment and abuse are mentioned and include:

- Use or threat of violence or criminal means to harm the debtor's person reputation or property
- Obscene or profane language
- Publication of "dead beat debtor" lists
- Repetitive communications
- Excessively ringing phone calls
- Any similar conduct likely to harass or abuse a debtor

The FDCPA also prohibits false, deceptive, or misleading representations or means used to collect a debt, including without limitation:

- Claims of governmental association
- Misrepresentations concerning the debt or collection services themselves
- Misrepresentation of the debt collector as an attorney or of the communication as being from an attorney
- Representations that failure to pay the debt or future actions of the debt collector will result in consequences that are unlawful or that the creditor does not intend to cause to happen
- Any other generally false or deceptive means.

A key false and deceptive practice that bears individual discussion is the failure to constantly remind the debtor that the present communication is an attempt to collect a debt and that any information obtained would be used for the purpose of collecting a debt.

• A debt collector must disclose in the initial written communication with the debtor and, in addition, if the initial communication with the debtor 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.

• A debt collector must also disclose in subsequent communications that the communication is from a debt collector. (Note that, nonsensical though it may be, the statute does not require this particular disclosure in the initial communication which must include the warning about attempting to collect a debt and any information obtained will be used for that purpose.)

The FDCPA also prohibits unfair practices such as:

- Collecting amounts not actually due (including interest, fees, charges and expenses not actually allowed by the credit agreement)
- Acceptance of checks postdated by more than five calendar days unless notice of intent to deposit them is delivered between three and ten business days prior to depositing them
- Premature deposit of postdated checks
- Taking or threatening dispossession or disablement of property unless one has the present ability and intention to lawfully do so
- Communicating with a debtor by postcard
- Use of any name on the outside of an envelope that indicates that the sender is a debt collector.

The FDCPA requires written or oral notice of the details of a debt and some advisory warnings either during the first oral communication or in writing within five days of the initial oral communication. The items required in the notice are:

- Name of the creditor
- Amount of the debt
- A statement that, unless the debtor expressly disputes the validation of debts within thirty days of receipt of the notice, the debt will be assumed to be valid
- A statement that, if the debtor disputes the debt in writing within thirty days of the receipt of the notice, the debtor will obtain verification of the debt and mail a copy of such verification
- A statement that, if the debtor requests from the debt collector the name of the original creditor, the debt collector will mail the debtor the name of the original creditor if different from the current creditor.

If the debtor makes a timely dispute, then the debt collector is required to cease collection activities until the debt collector verifies the debt and mails the details concerning the debt to the debtor.

The FDCPA requires that legal action on a debt be brought in the jurisdiction where either the contract supporting the debt was signed or where the debtor resides at the time of the commencement of the legal action.

The FDCPA is administratively enforced by the United States Federal Trade Commission. Many state attorneys general also enforce the FDCPA using the bootstrap that violation of the federal law is a violation of their states' unfair trade practices laws. In addition, there is a vigorous bar of plaintiffs' attorneys that make a good living suing even putative errant debt collectors.

Civil liability for violation of the FDCPA is:

- The amount of any actual damage sustained by a person (any person, not just the consumer) as a result of the violation, plus
- An additional amount that may be allowed by a judge up to a limit of
 - \$1,000.00 per individual plaintiff or,
 - o in a class action
 - \$1,000.00 for each named plaintiff and
 - the **lesser** of one percent (1%) of the net worth of the debt collector or \$500,000.
- Costs of the legal action including reasonable attorneys' fees.

The FDCPA has been referred to as a strict liability statute, meaning that intent is not an element of a claim and that mere unintentional violation of the statute can result in damages. There are, however, defenses to a claim for unintentional and erroneous results that violate the statute. Prior to availing oneself to these defenses, however, the debt collector or debt collection service must have had in place policies and procedures reasonably calculated to have prevented the error and the policies and procedures must have failed.

Section 7.2: Fair Credit Reporting Act ("FCRA") as amended by the Fair and Accurate Credit Transactions Act ("FACTA")

Creditors and debt collection services that furnish information to consumer reporting agencies are "data furnishers" or "furnishers of information" ("FOI"s) under the Fair Credit Reporting Act ("FCRA") and must fulfill the duties of only making "fair"debt credit reports imposed under that act. In addition, FCRA was recently amended by the Fair and Accurate Credit Transactions Act ("FACTA"), which imposed additional

restrictions on credit originators and by extension on the debt collection services that work for them.

These duties are predominantly contained in Section 623 of FCRA and concern providing the most accurate, most complete, and most currently updated information available to the consumer reporting agencies.

- One may not furnish information that is known or should be known to contain errors and one may not consciously avoid knowing of errors.
- Upon determination that any information reported to an agency is inaccurate or outdated, the data furnisher must promptly notify the reporting agency and provide the agency the correct information.

The definition of "should be known" to contain errors is when a data furnisher has specific knowledge which would "cause a reasonable person to have substantial doubts about the accuracy of the information." Therefore, even the hint of inaccuracy must be investigated and the results of the investigation must be forwarded to the consumer reporting agency.

Upon receiving a notice of a dispute concerning the completeness or accuracy of a debt upon which information has been furnished to a reporting agency, anyone having reported the original information and having knowledge of the dispute must notify the reporting agency of the dispute, regardless of the weakness of the dispute.

It is important for debt collectors to know that any dispute, oral or written, triggers the dispute reporting requirements of FCRA. Therefore, it is also important for the debt collector to know whether the account that is being working has been reported to a consumer reporting agency.

Date of Delinquency

FCRA bars furnishing information on "accounts placed for collection or charged to profit and loss that antedate the report by more than seven years." Therefore, it is important for a data furnisher to determine accurately the date of delinquency. The date of delinquency should be included in the data for all accounts being collected by a debt collector or agency.

The seven-year period begins, with respect to any delinquent account that is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180 day period beginning on the date of the commencement of the delinquency which immediately preceded the collection activity, charge to profit and loss, or similar action. Therefore, consumer reporting agencies must remove information that is more than 7 years plus 180 days past the date of delinquency. This is one reason that FCRA requires data furnishers to provide accurate information in general and about the date of delinquency in particular.

There are three ways in which to determine the date of delinquency. If the original creditor reported the debt and included the date of delinquency, then a subsequent reporter of the same debt may use the same date of delinquency. This is the preferred method of determining the date of delinquency, because the original creditor having had the original records of the transaction was putatively in the best position to make such an initial determination.

A second method of determining the date of delinquency may be used when the original creditor did not report the date of delinquency. In this situation, the data furnisher may use reasonable means to obtain the date of delinquency from the original creditor or, if the data furnisher is unable to obtain the original date of delinquency from the original creditor, then from another reliable source, and report that date.

A third method is used in the circumstances where no original or alternative source of a reasonable date of delinquency is available is. In this situation, a data furnisher must use reasonable means to report a date of delinquency that predates any actual date of delinquency.

It is important that debt collectors understand the date of delinquency concept, because many debts being collected may be well over seven and a half years old. If a debt collector is attempting to collect on debts that are so old that they cannot be reported to a consumer reporting agency, then the debt collector must be careful not to threaten to make such a report as part of the negotiation process.

Negative Information

FCRA requires financial institutions that extend credit to a customer and furnish negative information regarding the credit to a consumer reporting agency to furnish the debtor with a notice of the furnishing of the negative information. The definitions of a "financial institution," a "customer," and "extension of credit" are very broad. Simply put, a trader, manager, or third party collector of receivables would not be a financial institution because they do not create a customer relationship with the debtor. The owner of a delinquent receivable who directly or through a third-party collection agency enters into a payment plan with the debtor, however, does enter into a creditor-customer relationship and is required to give the debtor/customer notice of furnishing negative information if the payment terms are not fulfilled as agreed

The negative information notice must be clear and conspicuous and it only needs to be given once for each entire extension of credit. The Federal Reserve Board has developed two safe harbor negative information notices that may be used depending on whether the notice is given before or after the furnishing of negative information. These safe harbor notices are:

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on you account may be reflected in your credit report. We have told a credit bureau about a late payment, missed payment, or other default on your account. This information may be reflected in your credit report.

The negative information notice must be given either prior to or within thirty days after the furnishing of negative information. While it may not be given as part of the initial disclosures required by the Truth In Lending Act, FCRA states that the notice may be given early in the ordinary course of collection activity even though the financial institution never actually ends up furnishing any negative information. The question remains, however, whether placing such a notice on a collection notice without the present intention to actually make a report about the transaction to a consumer reporting agency is a misrepresentation prohibited by the FDCPA.

It is important that debt collectors know what this negative information notice is and means, because once the warning is included in a letter to a debtor, that debtor is likely to ask whether a negative report has in fact been made. If the prospective warning is used, then the collector needs to know that the key word in the warning is "may," as in "we may report" as opposed to "we have reported."

If a debtor asks the collector whether a negative report has been made, then the collector needs to be prepared to answer the question correctly.

Disputes and Investigations

FCRA also requires a data furnisher to receive disputes directly from a consumer and to make a reasonable investigation of disputes. The dispute does not have to be in writing to trigger a data furnisher's investigatory duties. The dispute must, however, challenge the accuracy or completeness of an item of information in the consumers file.

The investigation must include a good faith effort to determine the accuracy of the disputed information. The investigation should be completed within thirty days of receiving the debtor's notice of the dispute. If the information disputed is found to be inaccurate, then the data furnisher must notify all consumer reporting agencies to which the furnisher originally reported the inaccurate information and provide them with the new accurate information.

Frivolous or irrelevant consumer-initiated disputes do not require reinvestigation. A consumer-initiated dispute may be determined to be frivolous or irrelevant if (1) the debtor fails to provide sufficient information to investigate the disputed information or (2) the debtor has previously submitted substantially the same dispute either directly to a data furnisher or indirectly through a consumer reporting agency and the data furnisher has already investigated and reported on the dispute. If a data furnisher determines that a dispute is frivolous or irrelevant, the data furnisher must notify the debtor of that determination in writing within five business days of making such a determination and include in the notice the reasons for the determination and identification of any documents needed to investigate the dispute, which may be a general standardized notice.

In addition to directly making disputes with a data furnisher, consumers may also make disputes through a consumer reporting agency. A consumer reporting agency must report any dispute received to the data furnisher within five days of receipt. The data furnisher then must investigate and report the results of the investigation in the same manner as it would upon receipt of a dispute directly from the consumer.

When the consumer reporting agency receives a notice of dispute, it must report the dispute to the data furnisher and make its own investigation and notify the debtor of the results. The notice must include a statement that the debtor may include a statement of the debtor's position on the disputed information up to a limit of one hundred words. A consumer reporting agency may avoid all of these notice requirements if it makes a determination that the information is inaccurate and deletes it from the debtor's record within three days of receiving the dispute.

If a consumer reporting agency deletes information and the data furnisher then certifies that the information is complete and accurate, the consumer reporting agency may then reinsert the information and notify the debtor of the reinsertion.

It is interesting to note that FCRA specifically does not afford a consumer a right to sue a data furnisher for failure to investigate and report on a consumer-initiated dispute directly made to the data furnisher at the same time that FCRA is silent about a consumer having a right to sue a data furnisher for failure to investigate and report on a dispute made through a consumer reporting agency. Many courts and the Federal Trade Commission, however, have used this incongruity to find that a consumer can sue and recover damages from a data furnisher who fails to investigate and report on a dispute made by a consumer through a consumer reporting agency. Therefore, while performance of investigations of all consumer disputes should be encouraged, the investigations of and reports on consumer disputes through credit reporting agencies should be mandated by a data furnisher to be always completed and documented.

It is important that debt collectors understand that a dispute does not have to be in writing to trigger the investigation requirements under FCRA. It is also important that debt collectors recognize and report even mild disputes to their supervisors immediately, because the dispute investigation process must be completed within thirty days of the debtor making the dispute.

Health Information

FCRA places heavy restrictions on the use and disclosure of medical information. These medical information provisions of FCRA are pertinent to traders, managers and collectors of medical accounts.

"Medical information" is essentially anything obtained from a health care provider or the debtor that relates to the debtor's health, the debtor's health care, or payment for the debtor's health care. "Medical information furnishers" are health care providers or their agents or assignees who furnish information to a consumer reporting agency. Health care providers and their agents must register as such with any consumer reporting agencies to which they report data. Consumer reporting agencies must then encode this identifying data so that it is not discernible on a credit report.

It is very important that debt collectors understand the implications of using medical information when collecting medical-related accounts.

Information Sharing with Affiliates

FCRA now prevents affiliates from sharing information about consumers between themselves for the purposes of making marketing solicitations, unless the debtor is first notified in writing that such information sharing is possible and the debtor is offered an opportunity and method to opt out of the information sharing. Therefore, one affiliate dealing with a delinquent receivable may not share information about the debtor having that account with a related affiliate to use for selling the debtor any good or service. For example, a debt trader cannot exchange names with an affiliated equity loan provider without first complying with the notice and opt out provisions.

Identity Theft

FCRA prohibits the sales, transfer, or placement for collection of any debt that is alleged to be the result of identity theft. Exceptions to the rule include the repurchase of accounts sold and returned pursuant to an agreement to buy back accounts found to be the result of identity theft.

If a debt collector or user of a consumer report discovers that information about the debt may be the result of identity theft, then the debt collector or user of the debtor report must notify the other relevant parties, including but not limited to the current creditor, that the information may be the result of identity theft.

Truncation Requirements

FCRA requires all parties accepting credit and/or debit cards to print no more than the last five digit of the card number on the receipt provided to the consumer. FCRA also prohibits printing the expiration date of a card on the receipt given to the consumer.

Disposal of Records

FCRA requires anyone having information in or derived from a consumer report to dispose of that information properly. Disposal policies should be in writing and reasonably scaled based on the scope of the entity having the information.

Examples of reasonable methods is to burning, pulverize, or shred the paper records and electronically destroy and erase electronic data that is no longer needed in a manner that cannot be reconstructed. Outside records destruction agencies should only be used following a due diligence inspection of the outside agency including the review of an independent audit of the agency's operations.

Enforcement and Liability

Violators of FCRA are liable for

- Actual damages, including out of pocket damages, damages for humiliation, emotional stress, reputational damages, and damages to creditworthiness.
- Statutory damages ranging from \$100 to \$1,000
- Punitive damages
- Reasonable attorneys' fees
- Regulatory fines of \$2,500 per violation

The Statute of Limitations is the earlier of two years from discovery of the violation or five years from the time that the cause of action arose, which is the time of the violation.

Section 7.3: Gramm-Leach-Bliley Act ("GLBA")

Privacy Notice and Opt-Out Rights

A purchaser of delinquent debt is a "financial institution" for purposes of the Gramm-Leach-Bliley Act (the "GLBA"). The GLBA requires financial institutions to create and communicate to consumers a privacy notice, which discloses how the financial institution will use (or not use) customers' non-public personal information or personally identifiable financial information ("NPI" or "PIFI"). Non-public personal information is defined as "(i) Personally identifiable financial information; and (ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information is defined as "any information: (i) a consumer provides to [a financial institution] to obtain a financial product or service from [the financial institution]; (ii) about a consumer resulting from any transaction involving a financial product or services between [the financial institution] and a consumer; or (iii) [a financial institution] otherwise obtain[s] about a consumer in connection with providing a financial product or service of service to that consumer.

The GLBA also requires that consumers be given the opportunity to opt out of the sharing of this information with third parties, if the financial institution does or plans to share such information. Having a policy of never sharing NPI or PIFI eliminates the need to have and maintain opt-out programs and opt-out data.

These privacy notice and opt-out duties are triggered only when the financial institution establishes a "customer relationship" with a consumer. This occurs when the owner of the account directly or indirectly locates the debtor and attempts to obtain payment on the debt. Anyone owning a debt at the time that the debtor is first contacted about collection must furnish the notices "at the time of establishing a customer relationship."

It is important for debt collectors to understand the triggering effect that making an initial contact with a debtor causes. As a collector makes an initial contact on an account that is being collected for a debt purchaser, he or she should check the account record and be sure that a GLBA notice has been sent. If not, then he or she should advise the supervisor to be sure that one is quickly transmitted.

Gramm-Leach-Bliley Safeguards Rule

The GLBA Safeguards Rule requires anyone having possession of or using non-public personal information to safeguard that information. This duty to protect information includes not only financial institutions that collect nonpublic personal information from their own customers, but also financial institutions that receive customer information from other financial institutions. For the purposes of safeguarding non-public personal information, delinquent debt traders, managers, debt purchasers, third party debt collectors, and consumer reporting agencies are all "financial institutions" as defined by GLBA.

The Final Safeguards Rule requires that any financial institution develop a written information security program containing administrative, technical, and physical safeguards appropriate to the institution's size and complexity, the nature and scope of its activities, and the sensitivity of the customer information at issue.

Pursuant to the written information security program, each financial institution must:

(1) Designate an employee or employees to coordinate its information security program in order to ensure accountability and implement adequate safeguards. There is nothing in the Final Rule that prevents a financial institution from outsourcing safeguard functions as appropriate, provided that at least one of the financial institution's own employees is designated to see that such functions are properly carried out.

(2) Identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information and assess the sufficiency of any safeguards in place to control the risks.

(3) Design and implement information safeguards to control the risks identified through risk assessment, and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures.

(4) Oversee service providers by:

(i) taking reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the customer information at issue; and

(ii) requiring service providers by contract to implement and maintain such safeguards.

(5) Evaluate and adjust information security programs in light of the results of the testing and monitoring required; any material changes to its operations or business arrangements; or any other circumstances that the financial institution knows or has reason to know may have a material impact on its information security program.

The FTC offers the following suggestions regarding procedures that may be useful in Safeguards Rule compliance efforts:

- Lock rooms and file cabinets where paper records are kept.
- Use password-activated screensavers.
- Use strong passwords (at least eight characters long.)
- Change passwords periodically, and do not post passwords near employees' computers.
- Encrypt sensitive customer information when it is transmitted electronically over networks or stored online.
- Refer calls or other requests for customer information to designated individuals who have had safeguards training.
- Recognize any fraudulent attempt to obtain customer information and report it to appropriate law enforcement agencies.
- Instructing and regularly reminding all employees of the safeguards policy.
- Limiting access to customer information to employees who have a business reason for seeing it.

It would be wise to include the records destruction provisions of FCRA in the GLB Safeguards plan.

It is important that debt collectors know and understand their responsibilities under GLBA. Otherwise they may accidentally release non-public personal information about the debtor and incur liability for doing so.

In addition, crafty consumers will often allege that they are not required to speak with debt collectors or respond to collection notices because they have not yet received a GLBA Privacy Notice. A knowledgeable debt collector will know that a privacy notice does not have to be sent by a third party collection agency and be able to overcome a stall such as this.

Section 7.4: Federal Trade Commission Act (the "FTC Act")

Receivable traders, managers, and collectors are also subject to the Federal Trade Commission Act 15 U.S.C. 45 (the "FTC" Act), which prohibits "unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce." When debtors suing debt collectors find that neither the FDCPA or any other federal or state law applies to their particular grievance, they will allege violation of the FTC Act. Judges often find that bad acts by RTMC participants that would otherwise violate otherwise applicable federal or state law also violate the FTC Act.

It is important for debt collectors to understand that, even if the FDCPA does not apply to their actions, the FTC Act almost certainly will (as will similar state statutes). Therefore, even when collecting a creditor's debt as a creditor's employee in the creditor's name, a debt collector should always comport himself or herself as though every collection-related law applied to every thought, act, and word involved.

Section 7.5: Telephone Consumer Protection Act

The Telephone Consumer Protection Act of 1991 and the FCC Regulations implementing the TCPA were enacted to control the use of automatic dialing and announcing devices ("ADAD"s), predictive dialers, prerecorded and artificial messages, and caller identification. Some parts of the TCPA and regulations apply to all users of such devices and other parts of the TCPA and regulations only apply to telemarketers using devices. Pure debt collection, without the offering of any collateral goods or services, is not telemarketing. Therefore, the majority of the provisions of the TCPA do not impact collectors.

One part of the TCPA that does impact collectors is the prohibition of using autodialers (though humans can do legally dial the number themselves) to place calls to any emergency number, any guest room or patient room in a hospital, health care facility, elderly home or similar establishment; any wireless telephone; and any other number for which the debtor is charged for the call. Other regulations impacting collectors are the prohibitions against dialing numbers merely to see if they are connected to a facsimile or voice line and against tying up multiple phones lines of businesses at the same time.

Several key provisions of the TCPA do not impact collectors, because they are not telemarketers. Some of the inapplicable provisions are:

- The ring duration requirement, which requires telemarketers to let a phone ring for at least fifteen seconds
- The abandoned call requirements, which limit abandoning calls that are answered by a live answerer to no more than three percent of all calls that are answered live over a thirty-day period
- The two-second transfer rule, which requires transferring a call that is answered by a live answerer to a live caller or a precorded message containing the name and phone number of the caller
- The record maintenance provisions documenting these inapplicable provisions are equally inapplicable to collectors.

• The caller ID requirements to transmit caller identification including a telemarketer's phone number and, when available, a caller's name.

State laws providing more strict or less strict regulation of automated dialing and announcing devices than the TCPA may apply to debt collectors depending on the definition of the applicable users contained in those laws. Therefore, a review of a state's laws wherever a collector may be terminating calls should be made for compliance. When making such a review, one should pay attention to the definition of ADADs and the scope of users controlled and exempted from control by the particular state law.

State laws often contain circuitous references that are unclear. For example, Illinois has an exemption for prior or existing business relationships, except that the exempt ADAD user must still comply with call-termination requirements and caller identification requirements.

Often, there is an exemption from ADAD regulation if the ADAD is used to contact a party with whom the caller has a established business relationship. The exemption then turns on the definition of an "established business relationship."

Established business relationships may be limited in time. For example, some states limit established business relationships to those arising in the previous two or three years. If a delinquent account is six years old, does the current collector have an established business relationship with the consumer?

Established business relationships may also be limited, as is done in Nebraska, to those involving voluntary two-way communication, which has not been previously terminated by either party.

Some state laws also exempt users of ADADs if the ADAD is being used for a commercial purpose that does not include the transmission of an unsolicited offer to sell any good or service.

Section 7.6: Federal Wiretapping Act and Similar State Laws

Federal law prohibits ". . . any person who -- (a) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication" (18 U.S.C. § 2511(1)(a)). The act follows with an exception similar to that of many states: "It shall not be unlawful under this chapter for a person . . . to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception . . ." (18 U.S.C. § 2511(2)(d).) This means that, under federal law, one can record any conversation for which one has the consent of one of the parties to the conversation.

While the majority of the states are "one-party" states that follow the federal law, a minority of approximately thirteen states at last count, are "two-party" states, which

require the consent of all parties of a conversation being recorded. When considering whether to record telephone conversations between collectors and debtors, one must first consider whether one is calling from a one-party or a two-party state. If one is calling from a one-party state, then one may presume that recording all calls from that state may be legal. If one is calling to a two-party state, however, one must be sure that the two-party state does not apply its own law to calls terminating in its own state.

Section 7.7: Electronic Fund Transfer ACT and Regulation E

Electronic fund transfers (EFTs) are governed by Electronic Fund Transfer Act. The EFTA is explained through Official Staff Interpretation called Regulation E (12 C.F.R. §§ 205.1-205.17). Regulation E defines electronic fund transfers as, any transfer of funds that is initiated through an electronic terminal, telephone, computer or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. EFTA includes, but is not limited to:

- Point-of-sale transfers;
- Automated teller machine transfers;
- Direct deposits or withdrawals of funds;
- Transfers initiated by telephone; and
- Transfers resulting from debit card transactions, whether or not initiated through an electronic terminal. (EFTA does not, however, cover credit card transactions.)

Regulation E explains the authorization and notice requirements that must be followed when processing multiple sequential electronic fund transfers. In order to set up periodic (weekly, monthly, etc.) EFTs from the debtor's account, Regulation E requires the collector to obtain the written authorization of the debtor and provide the debtor with a copy of the authorization.

The Official Staff Interpretation to Regulation E states the requirements that preauthorized EFTs be authorized by the debtor "only by a writing" cannot be met by a payee's signing a written authorization on the debtor's behalf with only an oral authorization from the consumer. The OSI also maintains that a tape recording of a telephone conversation with a consumer who agrees to preauthorized debits also does not constitute written authorization for purposes of Regulation E.

In October of 2004, the Federal Reserve Board solicited comments about interpreting Regulation E such that a recorded telephonic authorization is tantamount to a written authorization. At the time of writing this document, the FRB has not yet changed the Official Staff Interpretation.

It is important that all debt collectors understand and comply with whatever procedures an agency has in place for Regulation E compliance.

Section 7.8: Regulation Z

In order to protect credit borrowers (debtors or consumers) and foster uniformity in the presentation of credit terms such as annual percentage rates, the United States Congress passed the Trust In Lending Act ("TILA"). TILA is enforced in accordance with the Regulations of the Federal Reserve Board which implement provisions of the Federal Truth-in-Lending Act. One of the key TILA regulations is Regulation Z, which covers disclosures of the annual percentage rate and other credit terms when credit is extended.

There are two schools of thought as to whether TILA and Regulation Z apply to debt collection services who enter into payment plans with consumers for repayment of delinquent accounts. The arguments between the two schools of thought turn on whether entering into such a payment plan is an extension of credit. Those contending that Regulation Z does not apply do so because they believe a payment plan is not an extension of credit that immediately follows a sale of a good or service.

The matter has not been resolved in any court cases as of the writing of this book. The safest position is to act as though the payment plans flows from the initial consumer purchases. If so, then Regulation Z would apply.

Under the application theory, disclosures under Regulation Z are required when:

- A collector regularly enters into a written agreement with a debtor regarding the payment of a debt;
- The account relates to credit extended for personal, family, or household purposes; and
- Payments are to be made in more than 4 installments; <u>or the collector adds interest</u> (if allowed by law) to an account on which interest was not previously charged, <u>or</u> the original interest is increased

All of these points must be present in order to trigger the disclosure requirements. If any one, or several, are not present, then no disclosures are required under Regulation Z.

If the disclosure requirements of Regulation Z are in fact required, then the information disclosed must include:

- the annual percentage rate;
- amount of finance charge;
- amount financed;
- amount of payments;

- number of payments;
- total of all payments;
- late charge arrangements;
- prepayment arrangements; and
- an opportunity for the debtor to receive an itemization of how the payments are to be applied.

Not only must all of these data elements be present in a Regulation Z Statement, but they must also follow a specified format.

It is important that debt collectors understand the triggers of Regulation Z. If a collection agency establishes the rule that payment cannot exceed more than four payments in order to not trigger the application of Regulation Z, then it is vitally important that debt collectors understand this reasoning and not exceed the four payment limit.

Section 7.9: Automated Check Handling (ACH) Requirements

The processing of automated check handling, check by phone, debit card (as opposed to credit card) and other similar transactions involving checking accounts are controlled by the National Automated Check Handling Association ("NACHA"). NACHA has very particular rules and regulations about when and how ACH transactions can be used.

A book equal in size to this one could be written about the NACHA ACH requirements. For the benefit of debt collectors, however, only a few things need to be remembered by a front line debt collector.

When taking payments using automated check handling, debt collectors need to realize the differences between the ACH formats of Prearranged Payment and Deposit (PPD) and Telephone-Initiated Entry (TEL). A TEL entry may only be used for a one-time payment pursuant to an oral authorization, which authorization should be recorded or confirmed in writing prior to the settlement of the payment. A PPD entry is used for a series of automated payments pursuant to a written authorization.

Another difference between TEL and PPD entries is that TEL entries should only be used when the originator (debt collector) and receiver (debtor) have a pre-existing relationship or when the telephone call during which the authorization is obtained is made by the debtor. A debt collector's idea or a preexisting relationship and NACHA's idea of a preexisting relationship may be two different things.

While many debt collectors contend that the existence of the delinquent debt proves the pre-existing relationship, many times the debt is many years old and the debt may have been sold to many intervening owners over those several years. NACHA rules define a preexisting relationship as one based on a written agreement between the originator and

receiver or when the receiver has purchased goods or services from the originator in the past two years.

Processing ACH transactions of a particular format is a representation that the originator of the transaction has obtained the appropriate authorization in the appropriate recorded (TEL) or written (PPD) form and that a pre-existing relationship of the proper basis or the call in which the authorization was obtained was made by the debtor. It would be a misrepresentation to process a series of TEL entries under the guise of saying they were each an individual entry for which the collector had obtained individual recorded authorizations.

Section 7.10: Heath Insurance Portability and Accountability Act ("HIPAA")

HIPAA is the acronym for the Health Insurance Portability and Accountability Act of 1996. The Centers for Medicare & Medicaid Services (CMS) is responsible for implementing various unrelated provisions of HIPAA. Because there are several different facets of the law, HIPAA may mean different things to different people. Here's a directory of CMS's business activities with regard to HIPAA.

Title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects health insurance coverage for workers and their families when they change or lose their jobs. This has nothing to do with debt collection.

The Administrative Simplification provisions contained in Title II of HIPAA, however, required the Department of Health and Human Services to establish national standards for electronic health care transactions and national identifiers for providers, health plans, and employers. These provisions also addressed the security and privacy of health data. When debt collectors are collecting health care related debt, these security and privacy of health data provisions have everything to do with debt collection.

Healthcare providers are required by HIPAA to strictly protect the "protected health information" (PHI) of their patients. If a healthcare provider shares any information about a patient, a patient's treatment, or payment of a patient's treatment with any third party, then that there party must agree to comply with the HIPAA security and privacy regulations.

Receivable traders, managers, and collectors who deal with healthcare debt must be designated as Business Associates ("BA"s) of the underlying medical service provider, a Covered Entity ("CE"). A BA is any entity that performs services on behalf of a CE that requires the use of Protected Health Information (PHI).

Protected health information is a term defined in HIPAA's Privacy Rule as a sub-set of individually identifiable health information that is transmitted by electronic media; maintained in any electronic medium; or transmitted in any other form or medium.

Individually identifiable health information is also a defined term in the Privacy Rule. It is "information that is a subset of health information, including demographic

information collected from an individual, and: (1) Is created or received by healthcare provider, health plan, employer, or healthcare clearinghouse; (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of healthcare to an individual; and (i) That identifies the individual; or (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual."

Under HIPAA, CEs must obtain satisfactory assurance that its BA will appropriately safeguard PHI before using and disclosing it through a written contract or other written agreement or arrangement with the business associate that meets the applicable requirements of the regulations enacted pursuant to HIPAA. This written agreement or arrangement is commonly referred to as the Business Associate Agreement ("BA Agreement"). Debt traders, debt purchasers, third party debt collectors, billing companies and outsourcing companies become obligated to comply with HIPAA through a BA Agreement.

The Privacy Rule makes clear that a CE may not use or disclose PHI, except as to carry out treatment, payment or health care operations.

A BA of a CE may use and disclose PHI in the same manner as would the CE for which the BA is performing services. For example, just as a CE may combine a patient's PHI with the PHI it receives about the patient from other sources in a single patient account file, so may a BA of that CE combine the PHI it receives about the patient from the CE with the PHI it receives from other CEs or BAs about that patient in a single patient account file. The BA may in turn use and disclose all of this information, regardless of its source, to perform billing, claims and collection services with respect to this particular patient on behalf of all CEs for which this BA performs services.

Generally, however, a BA may not use the PHI it receives from the CE to perform billing, claims or collection services on behalf of its non-CE clients. Thus, a BA may not use PHI to update addresses, phone numbers and other information on nonhealthcare accounts.

It is very important that debt collectors understand the full scope of their responsibilities under HIPAA. Violations of this particular law can result in both heavy fines and imprisonment.

Section 7.11: Bankruptcy Injunction and Stay

Violation of a Discharge's Permanent Injunction

A bankruptcy discharge constitutes a permanent statutory injunction prohibiting creditors from taking any action, including the filing of a lawsuit, designed to collect a discharged debt. A creditor can be sanctioned by the court for violating the discharge injunction. The normal sanction for violating the discharge injunction is civil contempt, which is often punishable by a fine.

If a creditor attempts collection efforts on a discharged debt, the debtor can file a motion with the court, reporting the action and asking that the case be reopened to address the matter. The bankruptcy court will often do so to ensure that the discharge is not violated.

The Automatic Stay

One issue that repeatedly arises in the RTMC industry is allegations that a creditor or collector is violating the automatic stay. Unfortunately, this allegation usually is true.

The automatic stay provides a period of time in which all judgments, collection activities, foreclosures, and repossessions of property are suspended and may not be pursued by the creditors on any debt or claim that arose before the filing of the bankruptcy petition except through the bankruptcy courts. This stay of creditor actions against the debtor automatically goes into effect when the bankruptcy petition is filed. The stay provides a breathing spell for the debtor, during which negotiations can take place to try to resolve the difficulties in the debtor's financial situation.

Under specific circumstances, the secured creditor can obtain an order from the court granting relief from the automatic stay. For example, when the debtor has no equity in the property and the property is not necessary for an effective reorganization, the secured creditor can seek an order of the court lifting the stay to permit the creditor to foreclose on the property, sell it, and apply the proceeds to the debt.

Section 7.12: State Laws

State laws vary about many things. A full discussion of all of the differences in all of the laws in all of the states is well beyond the scope of this text. The best source for such a discussion is the ACA's Guide To State Collection Laws and Practices. Nonetheless, some discussion of a few types of differences is pertinent.

Definition of a Debt Collector

Any RTMC industry participant must first determine whether that participant (such as a debt purchaser) is considered a debt collector in any particular state. Some states define the term "debt collector" specifically to include debt purchasers for purposes of state law governing debt collections, some exempt debt purchasers from such laws and regulations, and others leave the matter unclear. Anyone dealing with deliquent debt in any way is strongly advised to seek their legal counsel to determine which state laws and regulations are applicable.

Twenty-three states and the District of Columbia include original creditors within the ambit of their state debt collection laws. These states are:

• Arkansas

Colorado

California

• Connecticut

- Florida
- Iowa
- Kansas
- Louisiana
- Maine
- Maryland
- Massachusetts
- Michigan

•

- New Hampshire
 - New York

- North Carolina
- Oregon
- Pennsylvania
- South Carolina
- Texas
- Vermont
- Virginia
- West Virginia
- Wisconsin
- District of Columbia

Use of Trust Accounts

Alaska, Nevada, and Oregon require a collection agency collecting on behalf of creditor located in Alaska, Nevada, and Oregon to maintain a trust account for those collection proceeds to be maintained in Alaska, Nevada, and Oregon. Oregon will waive the in-Oregon requirement if the bond deposited with the state is increased to a higher amount. Maine, Michigan, New Mexico, and North Carolina allow a collection agency collecting for creditors located in those four states to maintain their trust accounts in the agency's home state, but only if the agency maintains segregated trust accounts strictly for the benefit of creditors located in each those four states.

Solicitation of Postdated Checks

Massachusetts does not allow the solicitation of postdated checks or similar financial instruments.

Causing Charges to a Debtor

Many people misread FDCPA Section 808 (5), which prohibits causing charges to accrue to the debtor by concealing the identity of the caller, to mean that a debt collector can never cause charges to accrue to a debtor by doing things such as calling a debtor's cell phone, even though it will cause the debtor to pay a per minute charge. This is too restrictive of a reading of Section 808(5), which actually states that commits an unfair practice by:

(5) Causing charges to be made to any person for communications by concealment of the true propose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

Some states having debt collection statutes patterned after the FDCPA, however, either sloppily or intentionally drafted the state's version of FDCPA Section 808(5) to be even more restrictive concerning causing charges to accrue to a debtor. For example, Michigan has worded its version of the unfair practice prohibition to include:

(g) Communicating with a debtor without accurately disclosing the caller's identity or cause expenses to the debtor of a long distance telephone call, telegram, or other charge.

This prohibition can reasonably be interpreted as meaning that Michigan prohibits causing any expenses to accrue to the debtor; not only from cellphone charges, but also from something like requiring that a debtor send in a payment through overnight carrier at the debtor's expense.

Therefore, debt collectors (and all other RTMC participants) would be well advised to research the specific state laws of each and every state where they contact debtors and be sure to comply with the most restrictive possible interpretations of those statutes. If a state's law can be interpreted to prohibit any additional charges to be incurred by the debtor, then the collector should be exceptional cautious about suggesting actions that could cause those additional charges to accrue.

Confirmation of Telephonic Payments

In Colorado, telephonic payments are governed by Rule 2.14 of the Colorado Collection Agency board, which rules are incorporated into the Colorado FDCPA, and which Rule 2.14 requires "two voices" verify the details of a payment by phone.

State Fair Trade and Unfair Trade Practices Acts, etc

Most states have a generic unfair trade practices act. When debtors suing RTMC participants find that neither the FDCPA or any other federal or state law applies to their particular greivance, they will allege violation of the states unfair trade practices act. Judges often find that bad acts by RTMC participants that would otherwise violate otherwise applicable federal or state law also violate the such state unfair trade practices acts. While judges may strain to rule in favor of debtors, many of these state fair trade and unfair trade practices acts technically do not apply to RTMC participants because the laws are limited to the sales of goods and services and not the collection of delinquent accounts.

States in which most national collectors obtain waivers

Because some state regulations are so onerous, especially for out of state collectors, many national collectors obtain waivers for the states of Alaska, Hawaii, Indiana, Michigan, Nebraska, Nevada, and Wisconsin.

Unauthorized Practice of Law

Some states consider any collection practices threatening legal action to be an unauthozied practice of law. These states include:

• Alabama

In addition, some states consider collecting a commission in addition to the amount owed (as opposed to being deducted from the amount collected that is less than or equal to the amount owed) is an indication of the unauthorized practice of law. States so considering this include: • Alabama

Court Closure Laws

Some state statutes prohibit a foreign company from filing a lawsuit in the state's courts without first having obtained a Certificate of Authority to do business in that state.

P8 for Each State

Complying with individual state laws can trip and trap many RTMC participants, Nonetheless, proper planning, preparation, and practice can help prevent pit-poor performances in those states.

Section 7.13: Coming Up Next

Now that we have focused our attention on compliance, let's go through another script for an initial collection call. Pay attention to the possible compliance issues that you may recognize in this script.

Chapter 8: Another Example of a Script

In this chapter, you will:

- Review a script of an initial collection call
- Look for any violations or concerns about possible violations of any federal or state laws known by you

The following script only assumes obviously appropriate responses in the context of the call.

Section 8.1: An Initial Collection Call Script

Collector:	Hello, Dave?
Debtor:	Yes
Collector:	Dave Debtor?
Debtor:	Yes. Who's this?
Collector:	You still get your mail at (Debtor's address shown on computer), right?
Debtor:	Yes. Who is this?
Collector:	Dave Debtor, Jr., right?
Debtor:	Yes. But I'm not telling you anything else until you tell me who you are.

Collector:	Thank you, Mister Debtor. This is Carl Collector with Generic DCS. We are debt collectors, this is an attempt to collect a debt, and any information obtained will be used for that purpose.
Debtor:	Yeah.
Collector:	In addition, Mister Debtor, we are talking on a line that is being recorded for quality control and training purposes. Is that okay with you?
Debtor:	Whatever.
Collector:	I am calling in reference to your [] account.
Debtor:	I know I owe it, but I just don't have the money.
Collector:	The balance on the account is []. This is a very old balance that is long past due and payable.
Debtor:	I just don't have the money.
Collector:	Mister Debtor, you are prepared to send the balance today, right?
Debtor:	Like I said, I just don't have the money.
Collector:	No? Well, how quickly can you raise it?
Debtor:	I don't know. Things are very tight right now.
Collector:	Mister Debtor, we can work on that in a minute. But, first, I have some important information to give you. If you'll get a pen and paper, then I can give you some details about this account.
Debtor:	Okay, I'm ready. But I still don't have any money.
Collector:	The GDCS account number is [].
Debtor:	Okay.
Collector:	[Repeat the number, because it is important.] That's, okay?
Debtor:	Got it, but I still don't have any money to pay this.
Collector:	The amount that is due and payable on the account is [].
Debtor:	Uh-huh.
Collector:	Again, my name is Carl Collector from GDCS.
Debtor:	Yeah.

Collector:	Our address is [].
Debtor:	Yeah.
Collector:	My telephone number is [toll free number], extension []. Are you writing all of this down?
Debtor:	Yeah.
Collector:	For the sake of accuracy, please read me back my name, address and phone number.
Debtor:	You're Carl Collector from GDCS, address is [], and phone is [].
Collector:	And now, just to be sure that I didn't read it to you wrong, read me back the account number and the balance due.
Debtor:	Account number is [] and the balance is [], but I still don't have the money to pay this bill.
Collector:	Now, Mister Debtor, time is of the essence for this account, because if I don't take some action on it today, then it may get picked up by a supervisor for review. I can keep your account off the supervisor's desk by filling out an extension form for you, if you will just let me ask you a few questions to update our files so that I can work with you better to solve your problem with this account.
Collector:	[Pause just a second for a response, but do not say okay or act like you are asking for their permission to ask them the questions.]
Debtor:	Fine.
Collector:	What type of work do you do?
Debtor:	[]
Collector:	What's your phone number at work?
Debtor:	0
Collector:	What's the name of your company?
Debtor:	[]
Collector:	Are you married?
Debtor:	[]
Collector:	What is your husband/wife's name?

Debtor:	0
Collector:	What type of work does your spouse do?
Debtor:	[]
Collector:	What's the name of his/her company?
Debtor:	[]
Collector:	How much is your car note every month?
Debtor:	0
Collector:	Do you have a large home mortgage payment to meet?
Debtor:	0
Collector:	Which do you use, a regular or special checking account?
Debtor:	0
Collector:	What kind of investments to you have? Stocks, bonds, or something else?
Debtor:	0
Collector:	Which credit cards do you use, Visa, MasterCard, American Express, or Discover?
Debtor:	[]
Collector:	[Having obtained the basic demographic and financial information, the collector is better prepared to begin the negotiations seeking to collect the largest amount of money in the least amount of time]
Collector:	As I said, because this balance is well past due and payable, we are dealing in both time and money. How close to the balance do you have today?
Debtor:	[]
Collector:	If I allowed you to send just [] dollars [whatever portion of the bill you can get] instead of the whole balance today, that would help you right?
Debtor:	0
Collector:	[Continue the negotiations using information obtained from the debtor, such as credit cards, checks, a loan against his/her home, refinance. After

the collector has negotiated the best arrangement possible – getting the most money in the least amount of time, it is time to move into the close.]

So, Mister Debtor, we've agreed that you are going to pay [] now, right?

Debtor: Yeah.

Collector: [Go over how you are going to get the money delivered to the office. First, ask for the payment on a credit card or check by phone. If you can't get that, then ask for Western Union or other fast money. If you can't get that, then ask for postdated checks in the overnight mail. If you can't get that, then ask for postdated checks via registered mail. If you can't get that, then settle for post dated checks in regular mail. If you can't get that then settle for a promise to send checks according to a set schedule. If you can't get that, then get out of the collections business.]

Mister Debtor, because of the time element involved, I want you to mail this payment via 'Overnight Mail' [do not recommend overnight mail in Michigan; see state specific law section to read why]. Are you familiar with Overnight Mail? You know that you will have to go to the Post Office and tell the clerk that you need to mail it Overnight Mail and you want to be able to track it. The clerk will give you an envelope. I want you put the check in the envelope, address it and give it to the clerk, pay the postage. The clerk is then going to give you a tracking number. I want you to call me when you finish at the post office and give me the tracking # printed on the receipt. Do me a favor and read me back my name and phone number, which you wrote down just a minute ago.

Collector:	Mister Debtor, I don't want to pin you down to the second, but what time
	on the [date of payment] can I expect your call?

Collector: Fine, I'll expect your call at [repeat date and time].

Debtor: [].

[].

Debtor:

Collector: One more thing and this is very important. In the memo section of your payment, you must place the account number that I gave you a few minutes ago. Read that number back to me, please.

Debtor: [].

Collector: Finally, please understand that your failure to keep this arrangement may be considered as a willful and deliberate attempt to evade this debt, which may result in my supervisor taking over your account and pursuing additional collection activities. Is this arrangement definite and well understood?

Debtor: []. Collector: I'll expect your call on [date] at [time].

Debtor: [].

Collector: "Have a nice day!"

Section 8.2: Errors and Omissions

What errors or omissions did you notice in the preceding script?

Section 8.3: Coming Up Next

After reviewing this script, move on to the next chapter and review some more clichés that may be helpful in overcoming some stalls and objections that may have come up.

Chapter 9: More Cliches

In this chapter, you will:

- Learn the need for developing cliches
- Practice using clichés to overcome stalls and objections.

Developing the ability to speak easily with consumers and overcome stalls and objections takes practice, practice, practice. Because most of the stalls and objections are common, most of them can be overcome with one or more of the following clichés. These clichés will only work if they can be recalled and said confidently without hesitation. These and other clichés, which will be developed through experience, should be practiced until they become easy to recall and say.

Section 9.1: That Is Unacceptable

If the debtor is offering anything less than what you think he or she should be offering, the debt collector's reply should be: "That is not acceptable."

Section 9.2: Time Is Of the Essence

Stress that time is of the essence at every possible opportunity. Use phrases such as, "Time is of the essence. Further delays in payment are no longer acceptable."

Section 9.3: That Would Help You, Right?

If you are doing anything at all that is less than taking full payment immediately, then you should drive home the point that you are helping the debtor by saying: "That would help you, right?"

Section 9.4: Getting the Good Faith Payment

If the debtor is asking for any extension of time to avoid immediate payment in full, you must work for a good faith payment of at least ten percent of any balance and nothing less than \$50.00. "In order to hold your account I must receive a substantial payment of intent and then I can work out the balance. With a \$_____ good faith payment I can approve you at \$_____ per month. That would help you, right? How quickly can you raise the \$_____?"

In order to hold your account, I will need a good faith payment immediately.

Section 9.5: Pushing For Automated Payments or Post Dated Checks

If a debtor wants an extension of time to pay an account, use quid pro quo to obtain a series of automated check handling (ACH) transactions or postdated checks. Use the following suggested mini-scripts for this.

"If you are going to want to make monthly payments, then we need to set them up to come out of your checking account automatically. Go get your checkbook and we can start setting these up."

Debtors may attempt a variety of stalls instead of cooperating. Some of these stalls and appropriate responses include:

- "Isn't that illegal?" Response: "No, the use of postdated instruments is not illegal." [NOTE, however, that the <u>solicitation</u> of postdated instruments is illegal in Massachusetts.]
- "My spouse has the checkbook." "I don't have my checkbood with me." Response: "We don't need the current checkbook. Any check or statement that has your bank's ABA routing and transit number and you checking account number will do just fine. Go get any blank check or cancelled check that you have from your account and we can start setting these up."
- "How do I know you won't take more than you are supposed to or take it out too early?" Response: "First of all, Mister/Miss Debtor, doing that would only result in the payment bouncing and that wouldn't help either of us. Second of all, it would be illegal and we would never intentionally do anything illegal."

Section 9.6: Dealing with Dodges and Stalls and Hardship Falls

If a consumer is doing nothing but whining and moaning, you have to shift the conversation quickly to finding a solution to the problem. Say, "So far you have only

told me what you can't do. Why don't you give me an idea of what you can handle financially and I'll see how I can work with you."

"In order to approve you for settlement (or for a lower settlement), you must show some type of financial hardship. What is your particular hardship?"

Another somewhat softer approach may be, "I understand that you are experiencing financial difficulties. In an effort to help you I can approve a hardship repayment plan of \$_____. That would help of, right?"

If the debtor is claiming a hardship status in order to stretch out his payment plan, get something more than empty promises for agreeing to it. Say, "My company is more than willing to cooperate with you; they are willing to give you the time you need to repay this bill. Nonetheless, cooperation is a two way street. To approve the hardship program I need you to represent your intentions to my supervisor with a series of post dated checks or checks by phone or credit card debits."

Section 9.7: The Road to Purgatory...

Some consumers will tell you how much that they wanted to pay the bill, but that they just couldn't for whatever reason they give. Turn them back around with "Your good intentions are appreciated, but your delays in payments are no longer acceptable."

Consumers will often say that they don't have enough money to pay for all of the things that they want and pay this old bill, too. Don't take this from them. Say, "Everyone desires the good things in life. However, desire must be tempered by income and ability to pay. You now have a serious problem and I will try to help you resolve it."

Section 9.8: Dealing with Attacking Consumers

Many times a consumer will react to their own anxiety about not paying a bill by attacking the collector calling them. The secret to managing this type of situation is to maintain your composure and maintain control of the call. The process can be perfected by practicing responses such as these.

Little attacks

Many consumers ask why you are bothering them. Tell them, "I'm not calling to add to your burdens. I'm calling to help you resolve one."

Other consumers may contend that they just should not have to pay their bill. Reply, "This is a fair and just debt."

Those who simply refuse to take responsibility from the beginning can be nudged along with, "While I'm not against to working with you, cooperation is a two way street."

Another response might be, "I'm calling to give you an opportunity to resolve this matter; otherwise, we will have to proceed accordingly."

Midsized attacks

Sometimes a consumer may be a little bit more hostile to a debt collector. Try some responses like these:

"I'm a reasonable person and willing to listen. I think I can help you."

"I realize you're having financial problems and don't enjoy being in this position. I think I can help you resolve this matter."

"I understand your situation Mister Jones. I'm sure we can come to an agreement that is fair to you and our company. "

"I can understand that you are upset about this situation. I would like to help put this behind you. Why don't we put our heads together and see how we can resolve this situation."

"I'm sure that discussing this matter isn't easy. I'm a reasonable person and can understand how things get out of control. I'm sure that we can come up with a resolution."

"Perhaps we started off on the wrong foot. Please accept my apology. If we work together I'm sure we can find a resolution to this situation."

Really big nasty attacks

Some consumers will get just down right vile on the phone. Stop them cold with, "Mister/ Ms. ______ when you ordered these goods or services, no one was rude to you. Why are you now speaking to me in this manner? I'm sure you realize that I am only asking you to repay what you owe."

If they won't stop, then add, "This has gone beyond the point of good taste and reason, both. I am afraid that, if this continues, then I will have to refer your file up to my supervisor for some other collection activity."

If they still don't stop, then start pulling out your own hammers.

At some point, if a debtor simply refused to be nudged gently in the direction of paying his or her bill, a collector has to become a little bit more assertive.

One method of entering this phase is to say, "There are two ways we can handle this situation – with or without your cooperation. I'd prefer to handle it on a voluntary basis with your cooperation. How would you like for me to handle it?

Next, if they still don't calm down, add, "If necessary, Mister _____, we know what we have to do. Nonetheless, the purpose of this call is to give you the opportunity to work this out now before we begin taking other collection efforts.

Hang up the call only as a last resort. If you have to say goodbye, however, do it as nicely as you can, because you may hear yourself again in court some day.

Say, "Mister/Ms. _____, you leave me no other alternative than to tell you to have a nice day." Follow this statement by gently hanging up the telephone.

Section 9.9: Harassment allegations

Consumers will often try to put a collector down by claiming that he or she is harassing them. Tell them that you will not be harassed either by saying, "Harassment is against the law, <u>for both of us</u>, Mister/Ms. _____. This is strictly a business call. I understand that you are having financial difficulties and don't enjoy being in this position. Let's take a step backwards and find a resolution to this situation."

Section 9.10: More procrastinating, "trying" consumer responses.

Consumers often say that they are trying to pay their bills. Respond to "trying" cries with replies like these:

"I can't deal in tries I can only deal in definite arrangements."

"What do you mean try . . . haven't you been trying all along? I can only establish definite arrangements."

"You have placed this bill on the back burner long enough. It is time that you rearrange your priorities and resolve this account."

"The time to try has passed us by, Mister/Ms/_____. You are in default of a legally binding contract."

Section 9.11: Strongly appeal to their honesty, without call them liars.

Many times an understand appeal to a debtor's honesty is enough to move the negotiations along. Sometimes, however, the appeal to honesty has to be a little stronger. Practice using appeals such as these:

"Your actions speak louder than your words. Why should I believe you now?"

"Do you have any honest intentions of resolving this debt?"

Section 9.12: "So, what are you going to do if I don't pay you?"

Debtors will sometimes attempt to seize control of a call by asking questions about what will happen if they do not pay their bills. Maintain control of the call by refusing to answer the question and returning to the negotiation by using responses such as these:

"I don't want to discuss our options with you Mister _____. I would rather discuss a resolution to this matter."

"Ms. _____, we can avoid further collection activity by working together to resolve this matter."

"Further collection activity on this account will depend on you Mister _____. We want to resolve this matter to the satisfaction of both yourself and our client."

"Ms. ______, as you have refused all reasonable offers to resolve this account; the only alternative I have left is hold your account for 24 hours to allow you time to reconsider our offers. If we do not hear from you tomorrow we will proceed accordingly."

Many debtors will simply keep asking what will happen if they don't pay their bills. At some time, a debt collector simply has to cut off the negotiation, send the file to a supervisor, and move on to the next call.

In this situation, say, "In my opinion you are refusing to pay this bill and I will document your account accordingly. However, if you have a change of heart you need to call me by ______ or we will have no alternative but to proceed accordingly. If not, then have a nice day."

Follow this by gently hanging up the phone.

Section 9.13: If they don't trust you with the payment account information

Debtors will often attempt to stall from entering into a payment plan using automated transaction by saying they do not trust the collector with their checking or credit card account information. A reasonable response is to remind them that trust is a two way street.

Say, "If you can't trust me with this information, how do you expect us to trust you to maintain an arrangement?"

Section 9.14: Calling back a hang up

Following a hang-up, some collectors make an immediate callback to be sure that the call was not terminated accidentally. If a reconnection is made, the collector may wish to inquire about the reason for the disconnection by saying something to the effect of, "I'm very sorry, Mister/Miss _____, but we seemed to have been cut off before we were done."

If the debtor begins to state that he or she hung up on purpose, then a collector may politely, but firmly reply by saying, "If you found our previous conversation not to your liking, then, please, accept my apology. Nonetheless, hanging up will not make this matter go away."

Chapter 10: Bankruptcy

In this chapter, you will:

- Learn the three types of bankruptcies
- Understand what a discharge is, how it is obtained, what it effects, and how it can be revoked
- Discuss the automatic stay
- Review safeguard procedures to prevent violating bankruptcy laws protecting debtors
- Learn what actions to take when a bankruptcy is alleged by a debtor

As stated before, bankruptcy is one of only a few things that should stop a collector from proceeding through a collection call. Most new debt collectors, however, have had very little exposure to bankruptcies and do not understand all of the types of bankruptcies or how to address a bankruptcy as part of a collection case.

Section 10.1: Three Types of Bankruptcy

Though six basic types of bankruptcy cases are provided for under the Bankruptcy Code, only three of them concern the type of consumer debtors general encountered in the RTMC industry. The cases are traditionally given the names of the chapters that describe them. Chapter 7 usually involves personal debtors with no or very few assets. Chapter 13 usually involves personal debtors with assets and regular income who want to start and finish a payment plan. Chapter 11 usually involves businesses or "wealthy, but bankrupt debtors" (as oxymoronic as that phrase may seem).

Chapter 7

Chapter 7, entitled Liquidation, contemplates an orderly, court-supervised procedure by which a trustee takes over the assets of the debtor's estate, reduces them to cash, and

makes distributions to creditors, subject to the debtor's right to retain certain exempt property and the rights of secured creditors. Because there is usually little or no nonexempt property in most chapter 7 cases, there may not be an actual liquidation of the debtor's assets. If there are no assets and no asset distributions, then these cases are called "no-asset cases."

A creditor holding an unsecured claim will get a distribution from the bankruptcy estate only if the case is an asset case and the creditor files a proof of claim with the bankruptcy court. In most chapter 7 cases, if the debtor is an individual, he or she receives a discharge that releases him or her from personal liability for certain dischargeable debts. The debtor normally receives a discharge just a few months after the petition is filed.

Amendments to the Bankruptcy Code enacted in to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 require the application of a "means test" to determine whether individual consumer debtors qualify for relief under chapter 7. If such a debtor's income is in excess of certain thresholds, the debtor may not be eligible for chapter 7 relief.

Chapter 13

Chapter 13, entitled Adjustment of Debts of an Individual With Regular Income, is designed for an individual debtor who has a regular source of income. Chapter 13 is often preferable to chapter 7 because it enables the debtor to keep a valuable asset, such as a house, and because it allows the debtor to propose a "plan" to repay creditors over time – usually three to five years. Chapter 13 is also used by consumer debtors who do not qualify for chapter 7 relief under the means test.

At a Chapter 13 confirmation hearing, the court either approves or disapproves the debtor's repayment plan, depending on whether it meets the Bankruptcy Code's requirements for confirmation. Chapter 13 is very different from chapter 7 since the chapter 13 debtor usually remains in possession of the property of the estate and makes payments to creditors, through the trustee, based on the debtor's anticipated income over the life of the plan.

Unlike chapter 7, a chapter 13 debtor does not receive an immediate discharge of debts. The debtor must complete the payments required under the plan before the discharge is received. The debtor is protected from lawsuits, garnishments, and other creditor actions while the plan is in effect. The discharge is also somewhat broader (*i.e.*, more debts are eliminated) under chapter 13 than the discharge under chapter 7.

Chapter 11

Chapter 11, entitled Reorganization, ordinarily is used by commercial enterprises that desire to continue operating a business and repay creditors concurrently through a court-approved plan of reorganization. The chapter 11 debtor usually has the exclusive right to file a plan of reorganization for the first 120 days after it files the case and must provide creditors with a disclosure statement containing information adequate to enable creditors to evaluate the plan. The court ultimately approves (confirms) or disapproves the plan of reorganization. Under the confirmed plan, the debtor can reduce its debts by repaying a

portion of its obligations and discharging others. The debtor can also terminate burdensome contracts and leases, recover assets, and rescale its operations in order to return to profitability. Under chapter 11, the debtor normally goes through a period of consolidation and emerges with a reduced debt load and a reorganized business.

Under present law, there is no requirement that the consumer, the creditor or the bankruptcy court notify a third–party debt collector when a consumer bankruptcy has been filed. The constant increase in the number of individuals filing for bankruptcy brings with it a greater risk of debt collectors unintentionally pursuing collections on accounts that have been included in bankruptcy.

The unintentional sending of even a single collection letter to a debtor who has filed for bankruptcy could prompt serious claims against the collection agency under both the Fair Debt Collection Practices Act (FDCPA) and the federal Bankruptcy Code. While the validity of such claims is subject to some dispute, it is imperative that collection agencies have safeguard procedures in place to avoid violating the automatic stay period or attempting to collect on an account that has been discharged in bankruptcy.

Section 10.2: The Bankruptcy Discharge

A bankruptcy discharge releases the debtor from personal liability for certain specified types of debts. In other words, the debtor is no longer legally required to pay any debts that are discharged. The discharge is a permanent order prohibiting the creditors of the debtor from taking any form of collection action on discharged debts, including legal action and communications with the debtor, such as telephone calls, letters, and personal contacts.

Unless there is litigation involving objections to the discharge, the debtor will usually automatically receive a discharge. The Federal Rules of Bankruptcy Procedure provide for the clerk of the bankruptcy court to mail a copy of the order of discharge to all creditors, the U.S. trustee, the trustee in the case, and the trustee's attorney, if any. The debtor and the debtor's attorney also receive copies of the discharge order.

The notice, which is simply a copy of the final order of discharge, is not specific as to those debts determined by the court to be non-dischargeable, *i.e.*, not covered by the discharge. The notice informs creditors generally that the debts owed to them have been discharged and that they should not attempt any further collection. They are cautioned in the notice that continuing collection efforts could subject them to punishment for contempt. Any inadvertent failure on the part of the clerk to send the debtor or any creditor a copy of the discharge order promptly within the time required by the rules does not affect the validity of the order granting the discharge.

Although a debtor is not personally liable for discharged debts, a valid lien (*i.e.*, a charge upon specific property to secure payment of a debt) that has not been avoided (*i.e.*, made unenforceable) in the bankruptcy case will remain after the bankruptcy case. Therefore, a secured creditor may enforce the lien to recover the property secured by the lien.

TIMING OF THE DISCHARGE

The timing of the discharge varies, depending on the chapter under which the case is filed. In a chapter 7 (liquidation) case, for example, the court usually grants the discharge promptly on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case for substantial abuse (60 days following the first date set for the 341 meeting). Typically, this occurs about four months after the date the debtor files the petition with the clerk of the bankruptcy court.

In individual chapter 11 cases and in cases under chapter 13 (adjustment of debts of an individual with regular income), the court generally grants the discharge as soon as practicable after the debtor completes all payments under the plan. Because a chapter 13 plan may provide for payments to be made over three to five years, the discharge typically occurs about four years after the date of filing.

The court may deny an individual debtor's discharge in a chapter 7 or 13 case if the debtor fails to complete "an instructional course concerning financial management." The Bankruptcy Code provides limited exceptions to the "financial management" requirement if the U.S. trustee or bankruptcy administrator determines there are inadequate educational programs available, or if the debtor is disabled or incapacitated or on active military duty in a combat zone.

WHAT DEBTS ARE DISCHARGED

Not all debts are discharged. The debts discharged vary under each chapter of the Bankruptcy Code. Section 523(a) of the Code specifically excepts various categories of debts from the discharge granted to individual debtors. Therefore, the debtor must still repay those debts after bankruptcy. Congress has determined that these types of debts are not dischargeable for public policy reasons (based either on the nature of the debt or the fact that the debts were incurred due to improper behavior of the debtor, such as the debtor's drunken driving).

There are 19 categories of debt excepted from discharge under chapters 7 and 11. A more limited list of exceptions applies to cases under chapter 13. Generally speaking, the exceptions to discharge apply automatically if the language prescribed by section 523(a) applies. The most common types of nondischargeable debts are certain types of tax claims, debts not set forth by the debtor on the lists and schedules the debtor must file with the court, debts for spousal or child support or alimony, debts for willful and malicious injuries to person or property, debts to governmental units for fines and penalties, debts for most government funded or guaranteed educational loans or benefit overpayments, debts for personal injury caused by the debtor's operation of a motor vehicle while intoxicated, debts owed to certain taxadvantaged retirement plans, and debts for certain condominium or cooperative housing fees. The types of debts described in sections 523(a)(2), (4) and(6) (obligations affected by fraud or maliciousness) are not automatically excepted from discharge.

Creditors must ask the court to determine that these debts are excepted from discharge. In the absence of an affirmative request by the creditor and the granting of the request by the court, the types of debts set out in sections 523(a)(2), (4) and (6) will be discharged.

A slightly broader discharge of debts is available to a debtor in a chapter 13 case than in a chapter 7 case. Debts dischargeable in a chapter 13, but not in chapter 7, include debts for willful and malicious injury to property, debts incurred to pay non-dischargeable tax obligations, and debts arising from property settlements in divorce or separation proceedings.

Although a chapter 13 debtor generally receives a discharge only after completing all payments required by the court-approved (*i.e.*, "confirmed") repayment plan, there are some limited circumstances under which the debtor may request the court to grant a "hardship discharge" even though the debtor has failed to complete plan payments. Such a discharge is available only to a debtor whose failure to complete plan payments is due to circumstances beyond the debtor's control. The scope of a chapter 13 "hardship discharge" is similar to that in a chapter 7 case with regard to the types of debts that are excepted from the discharge. A hardship discharge also is available in chapter 12 if the failure to complete plan payments is due to "circumstances for which the debtor should not justly be held accountable."

OBJECTIONS TO THE DISCHARGE?

In chapter 7 cases, the debtor does not have an absolute right to a discharge. An objection to the debtor's discharge may be filed by a creditor, by the trustee in the case, or by the U.S. trustee.

Creditors receive a notice shortly after the case is filed that sets forth much important information, including the deadline for objecting to the discharge. To object to the debtor's discharge, a creditor must file a complaint in the bankruptcy court before the deadline set out in the notice. Filing a complaint starts a lawsuit referred to in bankruptcy as an "adversary proceeding."

The court may deny a chapter 7 discharge for any of the reasons described in section 727(a) of the Bankruptcy Code, including failure to provide requested tax documents; failure to complete a course on personal financial management; transfer or concealment of property with intent to hinder, delay, or defraud creditors; destruction or concealment of books or records; perjury and other fraudulent acts; failure to account for the loss of assets; violation of a court order or an earlier discharge in an earlier case commenced within certain time frames (discussed below) before the date the petition was filed. If the issue of the debtor's right to a discharge goes to trial, the objecting party has the burden of proving all the facts essential to the objection.

In chapter 13 cases, the debtor is usually entitled to a discharge upon completion of all payments under the plan. As in chapter 7, however, discharge may not occur in chapter 13 if the debtor fails to complete a required course on personal financial management. A debtor is also ineligible for a discharge in chapter 13 if he or she received a prior discharge in another case commenced within certain time frames.

Unlike chapter 7, creditors do not have standing to object to the discharge of a chapter 13 debtor. Creditors can object to confirmation of the repayment plan, but cannot object to the discharge if the debtor has completed making plan payments.

BANKRUPTCY ABUSE

The court will deny a discharge in a later chapter 7 case if the debtor received a discharge under chapter 7 or chapter 11 in a case filed within eight years before the second petition is filed. The court will also deny a chapter 7 discharge if the debtor previously received a discharge in a chapter 13 case filed within six years before the date of the filing of the second case unless (1) the debtor paid all "allowed unsecured" claims in the earlier case in full, or (2) the debtor made payments under the plan in the earlier case totaling at least 70 percent of the allowed unsecured claims and the debtor's plan was proposed in good faith and the payments represented the debtor's best effort. A debtor is ineligible for discharge under chapter 13 if he or she received a prior discharge in a chapter 7 or 11 case filed four years before the current case or in a chapter 13 case filed two years before the current case.

REVOCATION OF THE DISCHARGE

The court may revoke a discharge under certain circumstances. For example, a trustee, creditor, or the U.S. trustee may request that the court revoke the debtor's discharge in a chapter 7 case based on allegations that the debtor: obtained the discharge fraudulently; failed to disclose the fact that he or she acquired or became entitled to acquire property that would constitute property of the bankruptcy estate; committed one of several acts of impropriety described in section 727(a)(6) of the Bankruptcy Code; or failed to explain any misstatements discovered in an audit of the case or fails to provide documents or information requested in an audit of the case.

Typically, a request to revoke the debtor's discharge must be filed within one year of the discharge or, in some cases, before the date that the case is closed. The court will decide whether such allegations are true and, if so, whether to revoke the discharge. In chapter 11 and 13 cases, if confirmation of a plan or the discharge is obtained through fraud, the court can revoke the order of confirmation or discharge.

Some RTMC participants specialize in buying accounts discharged in bankruptcy in order to assess the bankruptcy debtors' possible failures to comply with the Bankruptcy Code and, if failures are found, to object to a discharge and recover the full amount of the debt.

POST-DISCHARGE AFFIRMATION AND VOLUNTARY PAYMENT OF DEBTS

A debtor who has received a discharge may voluntarily repay any discharged debt. A debtor may repay a discharged debt even though it can no longer be legally enforced. Sometimes a debtor agrees to repay a debt because it is owed to a family member or because it represents an obligation to an individual for whom the debtor's reputation is important, such as a family doctor.

VIOLATION OF THE DISCHARGE'S PERMANENT INJUNCTION

The discharge constitutes a permanent statutory injunction prohibiting creditors from taking any action, including the filing of a lawsuit, designed to collect a discharged debt. A creditor can be sanctioned by the court for violating the discharge injunction. The

normal sanction for violating the discharge injunction is civil contempt, which is often punishable by a fine.

If a creditor attempts collection efforts on a discharged debt, the debtor can file a motion with the court, reporting the action and asking that the case be reopened to address the matter. The bankruptcy court will often do so to ensure that the discharge is not violated.

Section 10.3: The Automatic Stay

One issue that repeatedly arises in the RTMC industry, is allegations that a creditor or collector is violating the automatic stay. Unfortunately, this allegation usually is true.

The automatic stay provides a period of time in which all judgments, collection activities, foreclosures, and repossessions of property are suspended and may not be pursued by the creditors on any debt or claim that arose before the filing of the bankruptcy petition. This stay of creditor actions against the debtor automatically goes into effect when the bankruptcy petition is filed. The stay provides a breathing spell for the debtor, during which negotiations can take place to try to resolve the difficulties in the debtor's financial situation.

Under specific circumstances, the secured creditor can obtain an order from the court granting relief from the automatic stay. For example, when the debtor has no equity in the property and the property is not necessary for an effective reorganization, the secured creditor can seek an order of the court lifting the stay to permit the creditor to foreclose on the property, sell it, and apply the proceeds to the debt.

Section 10.4: Safeguard Procedures

RTMC participants should use their reasonable efforts to avoid violating the automatic stay and the permanent injunction. Proper planning, preparation, and practices can prevent these violations.

The best planning, preparations, and practices require a collection agency to:

- Have firm guidelines in place with its creditor clients to ensure accounts are checked for pending bankruptcies prior to turning the accounts over to the collection agency.
- Have a formal agreement signed by the creditor client stating it will not send accounts to the agency for collection that are subject to a consumer bankruptcy.
- Have a formal agreement signed by the creditor client stating it will send all notices of a consumer bankruptcy filing to the agency by fax or electronic means within 24 hours of receipt of notice.
- Identify a contact person within the creditor client's office and the office of the agency who will exchange information concerning the filing of a consumer bankruptcy petition.

- Have documented procedures in place that detail the steps it takes upon receiving notice that a debtor has filed for bankruptcy relief.
- Have documented training procedures in place to ensure that its debt collector employees are systematically prevented from collecting on any such debt.

It is important that a collection agency establish and follow effective safeguard procedures, not only to reduce the risk of attempting to collect a debt that is included in bankruptcy, but also to set forth a valid defense to unintentional violations of the FDCPA.

Section 10.5: Actions That a Collector Should Take When a Consumer Claims To Have Filed Bankruptcy

As soon as a debtor contends that he or she has filed a bankruptcy, the collector should immediately adopt an understanding tone and begin asking a series of fact-finding questions about the bankruptcy.

Tell the consumer, "Thank you, very much, for telling me that. I want to get our records straight immediately so that we don't contact you again about this debt. All I need is the Bankruptcy Court's Case Number or the contact information for the lawyer that you used to file the bankruptcy so that I can be sure that this debt was included in your bankruptcy."

Handle any dodges or stalls very politely by saying, "I know that you probably invested a lot of money and went through a lot of trouble filing for bankruptcy and I am sure that it was a hard time for you. I want you to be able to get the most out of your bankruptcy by getting our records straight if this debt was included in your bankruptcy. All I need to do that is the Bankruptcy Court's Case Number or the contact information for the lawyer that you used to file the bankruptcy so that I can be sure that this debt was included in your bankruptcy."

After telling the debtor to have a nice day, update the account and take whatever actions are contained in the agency's procedures to be sure that the bankruptcy in general and the specific account are verified.

Section 10.6: Bankruptcy Verification

Whoever verifies a bankruptcy should obtain the name of the attorney who filed the bankruptcy and contact that person to determine whether the account being collected was included in the bankruptcy. If the circumstances warrant it, bankruptcy schedules can be viewed on-line to be sure that the debt was included.

In a chapter 7 no asset case, an unsecured debt is discharged regardless of whether or not the debt was included on the debtor's schedule. In a chapter 11 or 13 case, the failure to list the debt may be grounds for obtaining relief from the automatic stay or permanent injunction or for reopening the bankruptcy.

The failure of the debtor to comply with all of the bankruptcy rules may also be grounds for revocation of the discharge. Such actions, however, are beyond the scope of this text.

Chapter 11: Deceased Debtors

Dealing with deceased debtors is almost as difficult as dealing with bankrupt ones. Dying without a sufficient estate to pay one's creditors is the ultimate debt discharge. Absent a co-debtor upon whom demand for payment can be made or some family member upon whom an appeal to familial pride can be suggested, there is not much that can be done with decedents' accounts.

Nonetheless, painful though the situation may seem, an effective debt collector must test the truth of any claims of death of the debtor in a way that is both sensitive and allows for verification. After offering condolences on the death, a debt collector should then ask the following questions:

- The date of death?
- The county of death?
- Whether the debtor left a will?
- Whether the debtor left an estate?
- Whether the estate is being probated?
- Whether an administrator has been appointed?
- Is it still possible to file a claim with the estate?
- Is there any family member who would be willing to pay the deceased debtor's account?

All of this information should be entered into the account file and acted on appropriately.

Chapter 12: Allegations of Fraud and Identity Theft

In this chapter, you will:

- Learn how to handle allegations of fraud and identity theft
- Review the FTC's Fraud/Identity Theft Affidavit

Section 12.1: Basics of Credit Fraud and Identity Theft

Identity theft occurs when someone uses the personal information of another (i.e., name, date of birth, social security number, credit card numbers, bank account numbers, etc.), fraudulently and without permission. Criminals usually do this to obtain money or goods and services, but identity theft is also perpetrated to obtain false drivers' licenses, birth certificates, social security numbers, visas and other official government papers.

According to FBI statistics, identity theft is currently our nation's fastest growing crime. The Federal Trade Commission also reports that "identity theft/fraud" is the fastestgrowing category of complaints the agency receives. These trends become more and more well-publicized as first one identity theft ring after another is caught stealing credit histories and other information of more and more people and use the information to spend enormous sums using credit card numbers, emptying bank accounts, and obtaining fraudulent loans—causing losses to consumers now estimated to be exceed millions of dollars per year.

Consumer advocates and security experts say identity theft crimes will only become more common, and criminals will only become more audacious in their thefts, as electronic transactions become ubiquitous.

All of this being said, however, debtors will often attempt to evade paying a debt by falsely claiming that their identity has been stolen and someone else set up the account

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being collected upon without the consumers notice or permission. On the other hand, there are times when a debtor's identity has been stolen resulting in a fraudulent account being erroneously placed with a collection agency.

Not knowing the truth from the lie, debt collectors are forced to test the veracity of every claim of identity theft as it arises. In order to test the truth of such an allegation, any consumer alleging fraud or identity theft should be required to file a police report about the identity theft with their local police department and submit it to the agency along with a completed identity theft affidavit.

If a claim of fraud or identity theft is invalid, many debtors will back down when asked to sign and submit a police report and affidavit under the penalties of perjury. If they are willing to do so, however, there is usually not much a debt collector can do to refute the claim unless some verifiable documentation or other circumstances can overcome the affidavit.

The starting point of overcoming the allegations of fraud is to have the debtor complete and submit a police report and affidavit. Therefore, let's review the affidavit in detail to see what information should be requested.

Section 12.2: FTC Fraud/Identity Theft Affidavit

In this chapter, you will:

- Learn how to address claims of fraud and identity theft
- Review the FTC's Identity Theft Affidavit

Claims of fraud and identity theft are difficult to address, because, many times they are almost impossible to prove. To help address the growing claims of fraud and identity theft, the Federal Trade Commission created and now recommends using an identity theft affidavit to begin to verify these types of claims.

A debt collector discussing a claim of fraud and/or identity theft should ask the following questions:

- Does the debtor know who has stolen his or her identity?
- Has the debtor filed a police report about the crime?
- Has the debtor notified any consumer reporting agency about the problem?

Once answers to these questions, a police report, and a completed Identity Theft Affidavit are obtained, a Dispute Resolution Desk or whatever person is similarly responsible should review it and make a recommendation to the Collector, Collection Supervisor, Collection Manager, or whoever else might have the ultimate decision of whether to return the account to the client or write off a purchased account for identity theft.

Let's review the Identity Theft Affidavit that is available from the FTC.

Instructions for Completing the ID Theft Affidavit

To make certain that you do not become responsible for the debts incurred by the identity thief, you must provide proof that you didn't create the debt to each of the companies where accounts where opened or used in your name.

A working group composed of credit grantors, consumer advocates and the Federal Trade Commission (FTC) developed this ID Theft Affidavit to help you report information to many companies using just one standard form. Use of this affidavit is optional for companies. While many companies accept this affidavit, others require that you submit more or different forms. Before you send the affidavit, contact each company to find out if they accept it.

You can use this affidavit where a **new account** was opened in your name. The information will enable the companies to investigate the fraud and decide the outcome of your claim. (If someone made unauthorized charges to an **existing account**, call the company to find out what to do.)

This affidavit has two parts:

- ID Theft Affidavit is where you report general information about yourself and the theft.
- Fraudulent Account Statement is

where you describe the fraudulent account(s) opened in your name. Use a separate Fraudulent Account Statement for each company you need to write to.

When you send the affidavit to the companies, attach copies (**NOT** originals) of any supporting documents (for example, drivers license, police report) you have. Before submitting your affidavit, review the disputed account(s) with family members or friends who may have information about the account(s) or access to them.

Complete this affidavit as soon as possible. Many creditors ask that you send it within two weeks of receiving it. Delaying could slow the investigation.

Be as accurate and complete as possible. You *may* choose not to provide some of the information requested. However, incorrect or incomplete information will slow the process of investigating your claim and absolving the debt. Please print clearly.

When you have finished completing the affidavit, mail a copy to each creditor, bank or company that provided the thief with the unauthorized credit, goods or services you describe. Attach to each affidavit a copy of the Fraudulent Account Statement with information only on accounts opened at the institution receiving the packet, as well as any other supporting documentation you are able to provide.

Send the appropriate documents to each company by certified mail, return receipt requested, so you can prove that it was received. The companies will review your claim and send you a written response telling you the outcome of their investigation. Keep a copy of everything you submit for your records.

If you cannot complete the affidavit, a legal guardian or someone with power of attorney may complete it for you. Except as noted, the information you provide will be used only by the company to process your affidavit, investigate the events you report and help stop further fraud. If this affidavit is requested in a lawsuit, the company might have to provide it to the requesting party.

Completing this affidavit does not guarantee that the identity thief will be prosecuted or that the debt will be cleared. If you haven't already done so, report the fraud to the following organizations:

- Each of the three national consumer reporting agencies. Ask each agency to place a "fraud alert" on your credit report, and send you a copy of your credit file. When you have completed your affidavit packet, you may want to send them a copy to help them investigate the disputed accounts.
- Equifax Credit Information Services, Inc.

(800) 525-6285/ TDD I-800-255-0056 and ask the operator to call the Auto Disclosure Line at I-800-685-1111 to obtain a copy of your report.

P.O. Box 740241, Atlanta, GA 30374-0241 www.equifax.com

 Experian information Solutions, Inc. (888) 397-3742/ TDD (800) 972-0322
 P.O. Box 9530, Allen, TX 75013
 www.experian.com

TransUnion

(800) 680-7289/ TDD (877) 553-7803 Fraud Victim Assistance Division P.O. Box 6790, Fullerton, CA 92634-6790 www.transunion.com

- 2. The **fraud department at each creditor**, **bank**, **or utility/service** that provided the identity thief with unauthorized credit, goods or services. This would be a good time to find out if the company accepts this affidavit, and whether they require notarization or a copy of the police report.
- 3. Your local police department. Ask the officer to take a report and give you a copy of the report. Sending a copy of your police report to financial institutions can speed up the process of absolving you of wrongful debts or removing inaccurate information from your credit reports. If you can't get a copy, at least get the number of the report.
- 4. The FTC, which maintains the Identity Theft Data Clearinghouse – the federal government's centralized identity theft complaint database – and provides information to identity theft victims. You can visit www.consumer.gov/idtheft or call tollfree I-877-ID-THEFT (I-877-438-4338).

The FTC collects complaints from identity theft victims and shares their information with law enforcement nationwide. This information also may be shared with other government agencies, consumer reporting agencies, and companies where the fraud was perpetrated to help resolve identity theft related problems.

	, 0	me is (First)	(Middle)	(Last)	(Jr., Sr., III	
(2)	(If different from	n above) When the eve	ents described in this af	fidavit took place, l	was known as	
	(First)	(Middle)	(Last)	((Jr., Sr., III)	
(3)	My date of birt	h is(day/month/ye	ear)			
(4)	My Social Secu	rity number is				
(5)	My driver's lice	ense or identification c	ard state and number	are		
(6)	My current add	dress is				
	City		_ State	Zip Code	e	
(7)	I have lived at t	this address since	(month/year)			
(8)	(If different from above) When the events described in this affidavit took place, my address was					
	City		State	Zip Code	·	
(9)	l lived at the ac	dress in Item 8 from _ (1		nth/year)		
(10)	My daytime telephone number is ()					
			_)			

GOVERNMENT AGENCY

How the Fraud Occurred

Check all that apply for items 11 - 17:

- (12) I did not receive any benefit, money, goods or services as a result of the events described in this report.
- (13) □ My identification documents (for example, credit cards; birth certificate; driver's license; Social Security card; etc.) were □ stolen □ lost on or about _____.

(day/month/year)

(14) To the best of my knowledge and belief, the following person(s) used my information (for example, my name, address, date of birth, existing account numbers, Social Security number, mother's maiden name, etc.) or identification documents to get money, credit, loans, goods or services without my knowledge or authorization:

Name (if known)	Name (if known)
Address (if known)	Address (if known)
Phone number(s) (if known)	Phone number(s) (if known)
Additional information (if known)	Additional information (if known)

- (15) I do NOT know who used my information or identification documents to get money, credit, loans, goods or services without my knowledge or authorization.
- (16) Additional comments: (For example, description of the fraud, which documents or information were used or how the identity thief gained access to your information.)

(Attach additional pages as necessary.)

Victim's Law Enforcement Actions

- (17) (check one) 1 \Box am \Box am not willing to assist in the prosecution of the person(s) who committed this fraud.
- (18) (check one) 1 am a mnot authorizing the release of this information to law enforcement for the purpose of assisting them in the investigation and prosecution of the person(s) who committed this fraud.
- (19) (check all that apply) 1 have have not reported the events described in this affidavit to the police or other law enforcement agency. The police did did not write a report. In the event you have contacted the police or other law enforcement agency, please complete the following:

(Agency #I)	(Officer/Agency personnel taking report)
(Date of report)	(Report number, if any)
(Phone number)	(email address, if any)
(Agency #2)	(Officer/Agency personnel taking report)
(Date of report)	(Report number, if any)
(Phone number)	(email address, if any)

Documentation Checklist

Please indicate the supporting documentation you are able to provide to the companies you plan to notify. Attach copies (NOT originals) to the affidavit before sending it to the companies.

- (20) A copy of a valid government-issued photo-identification card (for example, your driver's license, state-issued ID card or your passport). If you are under 16 and don't have a photo-ID, you may submit a copy of your birth certificate or a copy of your official school records showing your enrollment and place of residence.
- (21) Proof of residency during the time the disputed bill occurred, the loan was made or the other event took place (for example, a rental/lease agreement in your name, a copy of a utility bill or a copy of an insurance bill).

Name	Phone	number	Page 4
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(22) A copy of the report you filed with the police or sheriff's department. If you are unable to obtain a report or report number from the police, please indicate that in Item 19. Some companies only need the report number, not a copy of the report. You may want to check with each company.

Signature

I declare under penalty of perjury that the information I have provided in this affidavit is true and correct to the best of my knowledge.

(signature)

(date signed)

Knowingly submitting false information on this form could subject you to criminal prosecution for perjury.

(Notary)

[Check with each company. Creditors sometimes require notarization. If they do not, please have one witness (non-relative) sign below that you completed and signed this affidavit.]

Witness:

(signature)

(printed name)

(date)

(telephone number)

Completing this Statement

- Make as many copies of this page as you need. Complete a separate page for each company you're notifying and only send it to that company. Include a copy of your signed affidavit.
- List only the account(s) you're disputing with the company receiving this form. See the example below.
- If a collection agency sent you a statement, letter or notice about the fraudulent account, attach a copy of that document (NOT the original).

I declare (check all that apply):

As a result of the event(s) described in the ID Theft Affidavit, the following account(s) was/were opened at your company in my name without my knowledge, permission or authorization using my personal information or identifying documents:

Creditor Name/Address (the company that opened the account or provided the goods or services)	Account Number	Type of unauthorized credit/goods/services provided by creditor (if known)		Amount/Value provided (the amount charged or the cost of the goods/services)
Example Example National Bank 22 Main Street Columbus, Ohio 22722	01234567-89	auto loan	01/05/2002	\$25,500.00

During the time of the accounts described above, I had the following account open with your company:

Billing name

Billing address

Account number ______

DO NOT SEND AFFIDAVIT TO THE FTC OR ANY OTHER **GOVERNMENT AGENCY**

Name

Chapter 13: Skip Tracing

In the chapter, you will:

- Understand the importance of being able to find debtors
- Review a sampling of the various skip tracing websites available for free
- Learn the right way to skip trace post office customers

Section 13.1: Location, Location, Location

The three keys to successful real estate investing are location, location, and location. The three keys to successfully collecting from debtors are location, location, location – of the debtors that is. Debt collectors are constantly looking for newer and better ways to locate missing debtors, while missing debtors are constantly looking for newer and better ways of avoiding being found.

New and different data sets are being used in the debtor location process. The best skip tracing resources, however, combine broadened data coverage with more timely data currency, enhanced data accuracy, and technologically linked relational data coordination to take the ever increasing volumes of data and sift out the most likely manners and means of actually contacting a targeted debtor. What all of this actually means is that the better skip tracing companies are getting better and better at find debtors using larger and larger quantities of data about debtors.

Using these methods, skip tracing is accomplished in individual mode for one debtor at a time or in batch modes on selected groups of accounts. Quite often, consecutive searches are done in a waterfall fashion applying more informative subsequent searches only to qualifying resultant cohorts of the next preceding searches.

Pricing of skip tracing services is usually based on a per-transaction basis for smaller users and a less expensive (per amortized transaction) subscription basis for larger

users. Negotiating a "No New Info/No Charge" arrangement will allow a user to keep from being charged for just obtaining already validated information.

Thirty-five percent of delinquent debtors move annually. If a debt collector is working with a three-year-old portfolio, then more than likely most of the debtors have moved since they became delinquent. The key to collecting such a portfolio of delinquent receivables profitably is to identify and locate the debtors most likely to pay the soonest and easiest and contact them first.

To learn about skip tracing, all one needs to do is contact the major credit reporting and personal information database vendors. They will all tell you that their particular databases and proprietary technology is the best way to assess your customer accounts for collectability, prioritize collection efforts, receive identity verification information, leverage reliable tracing tools and services to locate debtors, and maximize your productivity. They will all have head to head comparisons showing that they found more debtors and helped collect money from them more effectively than the other similar companies. Compare all of these companies and their figures before signing up with any of them.

One billion credit cards are in use in the United States today. A similar number of consumer credit reports are issued annually in the United States. Four and a half billion pieces of data are entered monthly into credit records. Each of the consumer credit reporting bureaus — Equifax, Experian, and TransUnion — maintains approximately 200 million credit files, which are used by independent credit reporting agencies across the United States. In addition, other debtor information service providers complement the three national credit reporting bureaus.

The major debtor information agencies are:

- Accurint[®], <u>www.accurint.com</u>. Accurint[®] is a division of Lexis-Nexis and has the most widely accepted locate-and-research tool available (so they claim). According to them, their proprietary data-linking technology returns search results in seconds to the user's desktop. They are not, however, a credit reporting agency.
- Banko, <u>www.banko.com</u>. Banko is a subset of Accurint and Lexis, which only reports bankruptcy and deceased debtor information in either batch mode or real time.
- Equifax, <u>www.equifax.com</u>.Equifax is a one of the three national credit reporting agencies.
- Experian, <u>www.experian.com</u>. Experian is the second (alphabetically) national credit reporting agency.
- TransUnion, <u>www.transunion.com</u>. TransUnion is the third national credit reporting agency.
- Fair Isaac Corporation, <u>www.fairisaac.com</u>. Fair Isaac is predominantly known

by debtors and RTMC participants who use the company's FICO® scores, the standard measure of credit risk, to manage their financial health. Fair Isaac is also the leading provider of decision management solutions powered by advanced analytics.

• Consumer Data Industry Association, <u>www.cdiaonline.org</u>. The debtor Data Industry Association is an international trade association, founded in 1906, that represents debtor information companies that provide fraud prevention and risk management products, credit and mortgage reports, tenant and employment screening services, check fraud and verification services, and collection services. CDIA represents the consumer credit reporting information industry before state and federal legislators. It also represents the industry before the media in consumer credit reporting matters. CDIA sets industry standards and provides business and professional education for its members. It also provides educational materials for debtors regarding their credit rights and how consumer credit reporting agencies can better serve their needs. CDIA's membership includes 500 American credit reporting agencies, mortgage reporting companies, collection services companies, check services companies, tenant screening companies and employment reporting companies.

Some of the "supplemental" services include:

- Merlin Information Services, <u>www.merlindata.com</u>. Merlin is another public information and non-public information reseller which specifically denies being a consumer reporting agency regulated by the Fair Credit Reporting Act. Nonetheless, it does resell credit headers provided by the major consumer reporting agencies and, therefore, still requires users to have legitimate purposes to use its resources.
- Insight America, <u>www.insightamerica.com</u>. Insight America is another consumer information database provider.

Section 13.2: Skip Tracing Websites

While the consumer reporting agencies are effective at mining their databases to come up with a most likely address and phone number, sometimes locating individual debtors requires a bit more individual work. Successful skip tracing, however, requires an inquisitiveness akin to Sherlock Holmes' and a tenacity akin to Sylvester Stallone in Rocky XXV. To do that, there are many free websites available to get started. Getting these things requires the same thing that most of collections does; practice, practice, practice.

Begin by reviewing this short list of websites and see how each can be used to locate a purposefully lost debtor.

Google, www.google.com, is excellent for general searching of a person's name or phone number. Once a significant result of a search is obtained, more refined searches can be used to narrow the search within a search.

Skipease, www.skipease.com, is another excellent site which provides extensive links to other sites, including International directory assistance.

The Ultimates, www.theultimates.com, is a very good all-purpose site that allows name, address, and phone number look-ups to be made on multiple data bases simultaneously.

Crimetime, www.crimetime.com, provides links to a social security validator, a variety of states and can search for many things such as incarcerated debtors, licensed debtors, and real estate records.

To determine if a consumer is on active duty, one can enter his or her name in the following website and get an affidavit of active duty status or a statement that the database does not contain information concerning the consumer. https://www.dmdc.osd.mil/scra/owa/home.

Another interesting site that has some particular functions is the acronym finder, appropriately named, www.acronymfinder.com

Ancestry.com sponsors a site that can be used for finding family tree information and death records about a targeted consumer. A sister company's web address is www.rootsweb.com.

Section 13.3: Skip Tracers for Hire

There are a variety of people or companies who advertise that they can find the "unfindable debtor" – for a small fee, of course. They will not disclose how they are able to get a target's unlisted or cellular phone number, but for fees ranging from \$75 to \$150, they guarantee results.

Examples of these sites include:

- <u>www.phonesearches.com</u>
- <u>www.Intelius.com</u>

Section 13.4: Skip Tracing Moving Debtors and/or Post Office Boxholders

Debtors often attempt to hide their locations by moving from place to place or using post office boxes to obtain their mail instead of using their own residential or business address. A skip tracer attempting to find an evasive debtor is often frustrated by the debtor's frequent moves or use of a post office box. There is, however, a proper way in the proper circumstances to obtain a moving or boxholding debtor's actual current name and residential and/or business address.

The proper circumstance for obtaining this information is that it is needed for service of process in actual or prospective litigation. In order to obtain the use of a post office box

or callbox, a person must complete a PS Form 1093, Application for Post Office Box or Caller Service. For privacy reasons, the name and residential or business address listed on the Form 1093 is not usually available to the public. That does not, however, mean that creditors attempting to find this information can never get it.

There are a few limited exceptions to the rule that a post office customer's name and business or residential address will not be made available to the public. These exceptions are found at 39 Code of Federal Regulations 265.6(d)(5). The exceptions allow release of post office customer information only in one of the following four circumstances:

- To a federal, state, or local government agency upon prior written certification that the information is required for the performance of its duties
- To a person empowered by law to serve legal process in actual or prospective litigation, the attorney for a party in whose behalf such service will be made, or a party who is acting pro se in such actual or prospective litigation
- In compliance with a subpoena or court order
- To a law enforcement agency if the information is needed in the course of a criminal investigation

The exception most commonly used in relation to debtors is 39 CFR 265.6(d)(5)(iii), which allows release of a post office customer's name and address in the limited circumstance that the name or address is needed and will be used solely for service of legal process in connection with actual or prospective litigation.

The Postal Service requires the use of a standard format when requesting information under this service of process exception. The standard format must be used in its entirety. When using the service of process exception to obtain a boxholder's name and actual business or residential address, a requester must provide the postmaster with the following information:

- The capacity of the requester (e.g., process server, attorney, party representing self)
- The statute or regulation that empowers the requester to serve process (not required when requester is an attorney or a party acting pro se except a corporation acting pro se, which must cite such a statute)
- The names of all known parties to the litigation
- The court in which the case has been or will be heard
- The docket or other identifying number if one has been issued
- The capacity in which this individual is to be served (e.g., defendant or witness)

In addition, the request must be signed and the signature must immediately follow a warning statement that submission of false information in the request could result in penalties and a certification that the information is true and that the address information is needed and will be used solely for service of legal process in conjunction with actual or prospective litigation. If the request lacks any of the required information or a proper signature, the postmaster will return it to the requester specifying the deficiency.

Debt collectors should use extreme caution in making a request to the postmaster for boxholder information in order to not violate the FDCPA prohibitions about false and deceptive misrepresentations. The exception to the normal privacy rule that protects the names and addresses of postal customer requires that, prior to making such a request, there must be actual or prospective litigation.

Making a request to obtain the name and address of a post office customer without first having actual or prospective litigation in mind would probably be held to be a false and deceptive misrepresentation under the FDCPA. In addition, the submission of false information to obtain and use boxholder information for any purpose other than the service of legal process in connection with actual or prospective litigation could result in criminal penalties including a fine of up to \$10,000 or imprisonment of not more than 5 years, or both (see 18 USC Section 1001).

Therefore, prior to using this "service of process" exception to find a moving or boxholding debtor's name and address, a cautious and compliant debt collector should either file a lawsuit against the debtor in a court of competent jurisdiction or at least obtain authority and document the intention to file such a lawsuit if the name and address of the boxholder can be obtained.

Change of Address or Boxholder Request Format - Process Servers (Letterhead Optional)

Postmaster	Date
City, State, ZIP Code	
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	e process (not required when requester is an attorney or a party acting te statute):
3. The names of all known parties to the litigation:	:
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5. The docket or other identifying number if one h	as been issued:

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Chapter 14: Credit Reports

In this chapter, you will:

- Understand how the credit reporting system works
- Review a credit report in detail

One of the relatively few tools left for debt collectors to use to compel a debtor to pay a bill is the threat to report a delinquent account to a consumer reporting service, which is also commonly referred to as a credit reporting bureau. A full and complete understanding of the credit reporting system will help a debt collector to best utilize this one of the limited levers available to convince debtors to pay their just debts.

If a debtor has ever applied for a credit card, a personal loan, or insurance, a credit report file about that debtor probably exists. This file is chock full of information on where the debtor lives or has lived, how the debtor pays or has paid his or her bills, and whether he or she has been sued, arrested, or filed for bankruptcy.

Consumer reporting companies sell the information in people's reports to creditors, insurers, employers, and other businesses with a legitimate need for it. These entities use the information to evaluate the debtor's applications for credit, insurance, employment, or a lease. Debt collectors can legitimately use credit reports to assess ability to pay a debt or adhere to a payment plan.

Having a good credit report means it will be easier for a debtor to get loans and lower interest rates. Lower interest rates usually translate into smaller monthly payments. The leverage of a decreased credit report score that a negative report about a delinquent account may cause is one of the few tools that can a debt collector can use to nudge a debtor along. Many debtors' credit ratings are so bad, however, that they no longer care how many delinquent account reports they have.

Credit scoring is a system creditors use to help determine whether to give a debtor credit, and how much to charge for it. Information about the debtor and his or her credit

experiences, like bill-paying history, the number and type of accounts he or she may have, late payments, collection actions, outstanding debt, and the age of accounts, is collected from a credit report. Using a statistical formula, creditors compare this information to the credit performance of consumers with similar profiles.

A credit scoring system awards points for each factor. A total number of points — a credit score — helps predict how creditworthy an applicant is, that is, how likely it is that the applicant will repay a loan and make the payments on time. Generally, consumers with good credit risks have higher credit scores.

To develop a model, a creditor selects a random sample of its customers who have a known payment history, or a sample of similar customers if their sample is not large enough, and analyzes it statistically to identify characteristics that relate to creditworthiness. Then, each of these factors is assigned a weight based on how strong a predictor it is of who would be a good credit risk. Each creditor may use its own credit scoring model, different scoring models for different types of credit, or a generic model developed by a credit scoring company.

The predominant credit scoring model used in the credit granting workspace in the United States is the FICO score, so named because it is generated by the Fair Isaac Company.

There are three nationwide consumer reporting companies — Equifax, Experian, and TransUnion. Each of these consumer reporting companies collect and sell four basic types of information:

- **Identification and employment information:** A debtor's name, birth date, Social Security number, employer, and spouse's name are noted routinely. The consumer reporting company also may provide information about a debtor's employment history, home ownership, income, and previous address, if a creditor asks.
- **Payment history:** A debtor's accounts with different creditors are listed, showing how much credit has been extended and whether he or she has paid on time. Related events, such as the referral of an overdue account to a collection agency, also may be noted.
- **Inquiries:** Consumer reporting companies must maintain a record of all creditors who have asked for a debtor's credit history within the past year, and a record of individuals or businesses that have asked for their credit history for employment purposes for the past two years.
- **Public record information:** Events that are a matter of public record, such as bankruptcies, foreclosures, or tax liens, may appear in a debtor's report.

All of the information contained in a credit report must be fair and accurate. Under the Fair Credit Reporting Act (FCRA), both the consumer reporting company and the

information provider (the person, company, or organization that provides information about you to a consumer reporting company) are responsible for correcting inaccurate or incomplete information in a report. Under the FCRA, debtors may contact the consumer reporting company and the information provider if they see inaccurate or incomplete information.

Debtors claiming inaccuracies should tell the consumer reporting company, in writing, what information they think is inaccurate. Under the *Brady* decision, courts have held that even an oral dispute is sufficient to trigger investigation of an allegedly inaccurate item.

Debtors should include copies (NOT originals) of documents that support their position. In addition to providing their complete name and address, they letter should clearly identify each item in their report that they dispute, state the facts and explain why they dispute the information, and request that the information be deleted or corrected. It may be a good idea to enclose a copy of their report with the items in question circled. It may also be a good idea to send the letter by certified mail, return receipt requested, so the debtor can document what the consumer reporting company received. Debtors should keep copies of their dispute letters and enclosures.

Consumer reporting companies must investigate the items in question — usually within 30 days — unless they consider the dispute frivolous. They also must forward all the relevant data provided about the inaccuracy to the organization that provided the information. After the information provider receives notice of a dispute from the consumer reporting company, it must investigate, review the relevant information, and report the results back to the consumer reporting company. If the information provider finds the disputed information is inaccurate, it must notify all three nationwide consumer reporting companies so they can correct the information in debtor's file.

When the investigation is complete, the consumer reporting company must give the debtor the written results and a free copy of his or her report if the dispute results in a change. (This free report does not count as the annual free report under the FACT Act.) If an item is changed or deleted, the consumer reporting company cannot put the disputed information back in the debtor's file unless the information provider verifies that the information is, indeed, accurate and complete. The consumer reporting company also must send the debtor a written notice that includes the name, address, and phone number of the information provider.

If the debtor requests, the consumer reporting company must send notices of any correction to anyone who received the report in the past six months. A corrected copy of a debtor's report can be sent to anyone who received a copy during the past two years for employment purposes.

If an investigation doesn't resolve the dispute with the consumer reporting company, the debtor can ask that a statement of the dispute be included in his or her file and in future reports. The debtor also can ask the consumer reporting company to provide his or her

statement to anyone who received a copy of his or her report in the recent past. The consumer reporting agency can charge a fee for this service.

A debtor can also tell the creditor or other information provider (including a debt collector acting on behalf of a creditor), in writing or orally, that he or she disputes an item. If the information provider reports the item to a consumer reporting company, it must include a notice of debtor's dispute. And if the information is incorrect - that is, if the information is found to be inaccurate - the information provider may not report it again.

When negative information in a debtor's report is accurate, only the passage of time can assure its removal. A consumer reporting company can report most accurate negative information for seven years and bankruptcy information for ten years. Information about an unpaid judgment can be reported for seven years or until the statute of limitations runs out, whichever is longer. There is no time limit on reporting information about criminal convictions; information reported in response to an application for a job that pays more than \$75,000 a year; and information reported because you've applied for more than \$150,000 worth of credit or life insurance. There is a standard method for calculating the seven-year reporting period. Generally, the period runs from the date that the event took place.

Many people, however, have never seen a credit report and many who have seen one probably do not understand what all of the information means.

Below is a copy of a credit report followed by a detailed explanation of that report.

CLICK ON THE CIRCLED NUMBERS TO VIEW THE CORRESPONDING REPORT ITEM

SAFESCAN: (1)

Optional fraud system. Year and state of residence when Social Security number was issued.

2 CONSUMER REFERRAL MESSAGE:

- This is the address and phone number of the reporting agency. It is provided to assist you and the consumer in the event of adverse action.
- SINCE: (3) Date file was established

FAD: 4)

- Date of last activity on file
- FN: 5) FILE NUMBER for Equifax internal use only

IDENTIFICATION 6)

Subject name Current address, telephone numbers, origin & date added to file Former address Second former address Also known as Birth date, SSN subject, SSN verified - Yes (Y) or No (N) (According to Equifax rules; SSN has been verified through major Equifax custo Social Security Administration will not verify SSN)

EMPLOYMENT:

ES-(Employment subject) position, firm, location, date employed, date verified EF-(Employment former) position, firm, location, date left E2-(Employment second former)

(8) SUMMARY OF FILES ITEMS:

04/73-Oldest opening date of trade 07/98-Newest reporting date of trade PR/OI-YES-File has public records COLL-YES-File has collection items FB-NO-When file contains no information from credit reporting companies not affiliated with Equifax ACCTS: 10-File contains ten tradelines HC-HIGH CREDIT Range \$450-87,595 -ONES—Six trades in file coded 1 6-

- 1-TWO-One trade in file coded 2
- 1—THREE—One trade in file coded 3
- 1—FIVE—One trade in file coded 5
- 1—OTHER—One trade with no code
- HIST DEL-(Historical delinquency)

Reflects the number of tradelines with the highest delinquency rating in either the Max/Del or 24-Month History

(9) INQUIRY ALERT:

Alert appears if three or more inquiries occurred within the past 90 days.

(10) PUBLIC RECORDS OR OTHER INFORMATION:

BKRPT (Bankruptcy) date filed, court number, case number, liabilities, assets, exempt amount, filer, type, intent—chapter number ST JD-(Satisfied judgment) date filed, court number, amount,

defendant, case number, plantiff, date verified, status, date satisfied

(11) COLLECTION ITEMS:

LIST-Date assigned to collection agency

- RPTD-Date reported AMT—Total amount of collection BAL—Balance as of date rpted.
- DLA-Date of last activity (payment to client)
- ECOA-Equal Credit Opportunity Act designator
- AGENCY—Collection agency member number CLIENT—Customer the agency represents
- STATUS-Last activity reported
- SERIAL-Account serial number

FIRM /ID CODE-Name and customer number of reporting company

*-Trade information from automated tape supplier

TYPE OF ACCOUNT:

R=Revolving account O=Open account (30,60 or 90 days) I=Installment account

	CS-Current Status of Account				
Code	Description				
0	Too New to Rate; Approved But Not Used				
1	Paid As Agreed; Satisfactory; Current				
2	Pays 31-60 Days; Not More Than 2 Payments Past Due				
3	Pays 61-90 Days; Not More Than 3 Payments Past Due				
4	Pays 91-120 Days; Not More Than 4 Payments Past Due				
5	Pays Over 120 Days; Not More Than 5 or More Payments				
	Past Due				
7	Making Regular Payments Or Paid Under Wage Earner				
	Plan Or Similar Arrangements				
8	Repossession				
9	Charged Off To Bad Debt				

RPTD-Date account was reported

LIMIT—Credit limit

HICR—High credit

BAL \$—Balance owed as of reporting date

DLA-Date of last activity on the account

MR-Months reviewed

(30 60 90+)-Number of times account was 30 60 or 90+ days late MAX/DEL—Most recent, highest delinquency before the 24 month history

(13) Second Line:

	ECOA CODES				
Code	Description				
U Undesignated					
Ι	Individual				
А	Authorized User				
J	Joint				
С	Co-Maker				
В	On Behalf Of				
М	Maker				
Т	Association With Account Terminated				
S	Shared				

ACCOUNT NUMBER:

OPND-Date account was opened with reporting company P/D-Past due amount as of reporting date

TERM-Monthly repayment amount or number of months or years 24-MONTH HISTORY: Rate history for 24 months prior to current status, slash(/) separates two 12-month periods. (Read from left to right)*=No delinquency reported this month.

(14) NOTE:

Accounts grouped by revolving, open, and installment. Within each group, trades sorted by most recent date reported. Totals calculated for limit, high credit, balance, past due and terms within each group.

(15) GRAND TOTAL: Grand total for limit, high credit, balance, past due and terms

OTHER: (16)

Accounts not reflecting rating type (Revolving, open, installments)

INQUIRIES: (17)

Customer name, number and date inquired. Two years inquiry history shown.

(18) SAFESCANNED: This file was accessed by a customer using the Equifax SAFESCAN* service, an Equifax fraud protection service

(19) DATE FILE WAS ACCESSED.

(12) TRADE: First Line Debtors often ask debt collectors whether their account has been reported to a credit reporting bureau or consumer reporting agency. Anything other than a truthful response to such a question may be construed to be a false and deceptive misrepresentation. Therefore, if it has not been reported, then holding off on reporting the delinquent account can be used to get a payment plan approved and completed more quickly. If the account has already been reported, then being able to report a PIF or a SIF after a payment plan has been completed is the only thing that can be offered.

An issue often arises, however, when the debtor asks whether a report has been made and one has not. Some debtors are concerned that an account may be reported. Rather than give them a promise that it will not be reported, which may not be within the debt collectors authority, the best response is to state that the decision about whether to report an account to a CRA is made by higher authorities in the company.

Chapter 15: Using Computerized Collections Case Management System

In this chapter, you will:

- Develop an understanding of functional components of computerized collections case management systems
- Review the standard data elements used by such systems
- Learn about status indicators, action and result codes, and queuing indicators

Computerized collections case management systems have two purposes:

- To store all of the data about all of a collection agency's accounts being collected
- To manage the progression of each account through the collections process

Most collections management systems have and use the same functional components. These common function components are:

- An account work screen containing data about the case, such as:
 - Debtor demographics
 - Particulars of debt
- Case status indicators
- Case queuing indicators
- Case action and result diaries
- Agency account payment and balance ledgers

Let's discuss these bits and pieces of a computerized collections case management system one at a time.

Section 15.1: Debtor Demographics

Obviously, the basic debtor demographics such as name, address, city, state, zip code, home phone, work phone, cell phones, social security number, driver's license number, place of employment, etc. have the essential function of allowing location of and contact with the debtor. In addition to that basic function, however, much more can be gleaned from just the mere demographics themselves and comparison of the demographics with each other for consistency and complementary information. For example, zip codes can be used to derive local affluency estimates, which can be used for probability of payment ("POP") analysis. POP scores can then be used to modify queue levels for a portfolio of accounts such that the accounts with the highest POP scores are called first. Zip codes can also be used to predict levels of bankruptcy activity by comparing with bankruptcy statistics reported by zip codes. Checking social security numbers, first for duplication within a portfolio, second for general validity and then third for accuracy against the specified debtor's social security number in other databases can respectively help with locating and linking accounts to a common consumer, can indicate fraudulent activity, and can be used for additional skip tracing identification.

Section 15.2: Particulars of Debt

Particulars of debt have both account identification and predictive, progression, and historical analytical uses. Predelinquency account details and activity can give some insight into a debtor's ability to pay the delinquent balance. Therefore, it is always better to attempt to obtain as much as is possible of the predelinquency account details and activity. Unfortunately, much of this information is seldom available in third party and purchased debt collections.

The data usually available with a third-party or purchased debt file at least include:

- Description of goods or services purchased
- Originating creditor's account number
- Current creditor's or forwarder's account number
- Last originating creditor statement date
- Last originating creditor statement amount
- Last originating creditor payment date
- Last originating creditor payment amount
- Delinquency date
- Charge-off date
- Prior creditor's collection activity

The majority of this information is collectively useful in developing probability of payment scores and valuing portfolios for possible purchase. Much of this account-

specific data is also useful to front end collectors attempting to overcome stalls and objections and negotiate a payment plan.

Section 15.3: Status Indicators

Status indicators show how far along the usually collections process a case is progressing. Generally, each account is given a NEW status as it is loaded into a particular collection case management system and the status of each account in a portfolio is then continually revised as the account moves through the collections process.

There are usually two ways in which the status of a case is changed. Either the case management system changes the status automatically when some event occurs or the collector or supervisor or some other authorized user will manually change the status of a case based on some particular action or result.

Examples of an automatic status change include:

- Change from NEW to ACT (active) when a case is taken from a predictive dialing or custom queue and some action is performed on the account.
- Change from NEW to L01, when the first collection notice is mailed to the consumer.
- Change from some active status to PIF when a payment equal to the current balance is processed.

Depending on how they are used, grouped, and reported, status indicators can allow for monitoring the progress of individual accounts, individual portfolios, individual collectors; groups of the accounts, portfolios or collectors; or even entire agencies. Attaching a "percentage of completion" indicator and/or a date to a status can allow for a quantitative estimate of the progress of accounts or portfolio of accounts or effectiveness of a collector, etc. The values used as percentage of completion indicators may vary from agency to agency. Nonetheless, within an agency or when comparing agencies using identical or closely similar values, percentage of completion indicators can be quite useful in assessing effectiveness.

For example, if dates and percentage of completion fields were used in a status report showing all cases grouped by collector, then such could be used to show the percentage of completion of all cases held by that collector. In another example, applying dates to changes in status can allow monitoring how long it takes to move an account from one stage of a collections process to another.

A sample of a list of statuses, in relative order of their appearance in a collection process is as follows:

Status Indicators

Status	Status Description	Percentage of

NEW	Freshly loaded account	1
SCR	Scrubbing externally	2
APP	Appending additional or updated location	3
L01	First Notice of Debt Sent. This may increment to	10
BAD	Bad addresses	11
BPN	Bad phone numbers	12
BLI	Bad location information (both address and phone	13
SKP	Skip tracing to correct bad location information	14
LNP	Letter for debtor with no phone number	15
A01	Attempted to contact first time	20
C01	Contacted first time, this may increment with each	30
SLW	Statute of limitations warning	35
WSL	Working despite expired statute of limitations	40
BPP	Bankruptcy predates placement of returnable	98
B07	Bankruptcy chapter 7 subsequent to placement of	98
B11	Bankruptcy chapter 11 subsequent to placement of	98
B13	Bankruptcy chapter 13 subsequent to placement of	98
BCF	Bankruptcy – claim filed	40
BWO	Bankruptcy, but working on this claim	45
DEP	Deceased – estate pending	45
DCF	Deceased – claim filed with estate	50
DNE	Deceased – no estate pending	45
DRP	Deceased – requested payment from other person	50
DEX	Deceased – efforts exhausted	98
DSL	Disputes – Statute of limitations has expired	98
DRV	Disputes - Requests Verification	50
D01	Disputes – Billing: called to cancel service but was	50
D02	Disputes – Service related problem	50
D03	Disputes – Equipment problem	50
D04	Disputes – Never had account, never received	50
D05	Disputes – Wrong SSN	50
D06	Disputes – Previous dispute made with original or	50
D98	Disputes – Refuses to pay	70
D99	Disputes – Cease Communication	70
PRL	Pre-legal review	71

		1
RTL	Referred to legal	75
LL1	First legal letter, this may increment with	80
LA1	First legal attempt to contact, this may increment	85
LC1	First legal contact with debtor, this may increment	89
LSF	Legal suit filed	90
LDO	Legal discovery ongoing	91
LPT	Legal pending trial	92
LJO	Legal judgment obtained	93
LEG	Legal execution/garnishment of judgment pending	94
LPP	Legal payment plan agreed	95
LEX	Legal efforts exhausted	97
BPR	Broken promise returned to collector	94
РРР	Partial payment plan agreed to	95
NMP	No more payments in most recent partial payment	95
PPA	Payment plan agreed to	95
SSA	Substandard settlement approval requested	96
SIF	Settled in full	97
PIF	Paid in full	97
SLE	Statute of limitations expired	97
AEX	All efforts exhausted	97
SUS	Suspended by client or forwarder	97
REC	Recalled by client or forwarder	97
CLO	Closed	98
RTC	Returned to client or forwarder	99

A simple status report used by many agencies only shows the number of accounts with a particular status at any given point in time. Another simple report is the number of accounts held by a particular collector being given a particular status on a given day.

Section 15.4: Action and Result Codes

Action and result codes are similar to status codes. While a status code shows where in a particular collections process a particular account may be, action and result codes show the details of how the account managed to reach that status. Depending on the level of detail used in Status codes and Action and Result codes, the two can show very similar information. Nonetheless, because Status is purely the location of an account in a collections process and Action and Result codes show details of collector activity, they are in fact used differently to assess different information.

Action codes and Result codes are generally two alpha characters, but this is not a strictly adhered to convention. Two additional fields, "Attempted" and "Contacted," are often used to define Action codes. These fields are used to quantify collector activity by counting the number of Action codes that each collector generates in a given period of time that will qualify as "attempts" to contact someone (usually the consumer) or actual "contacts" made in order to work on an account.

Two additional fields "Contacted" and "Worked" are also often used to define Result codes. These fields serve a similar function as the "Attempted" and "Contacted" fields in Action codes, which is to quantify the amount of work that is being done.

Whether an Action is both Attempted and Contacted depends on whether one is also using Result codes that are counted as "Contacted" and "Worked." For example, if an action for "Telephoned Debtor's Residence" is set to be both "Attempted" and a "Contacted" and the Result Code for "Talked To Consumer" is set to be both "Contacted" and "Worked," then the Action "Telephoned Debtor's Residence" that succeeds in "Talked To Consumer" would result in one Attempted, two Contacted's, and one "Worked." This may lead to erroneous data in the number of Contacted's that actually occurred. Therefore, care must be used in defining Action and Result Codes in conjunction with each other.

Action Code	Description of Action Code	Attempted	Contacted
AT	Attorney telephoned us		Y
RL	Received and reviewed letter		Y
СО	Comment only		
DT	Debtor telephoned office		Y
TA	Telephoned consumer''s atty	Y	
TC	Telephoned client	Y	
TE	Telephoned employer	Y	
TI	Telephoned information	Y	
TR	Telephoned debtor's residence	Y	
SC	Supervisor conference		
CC	Assigned to clerical queue		
ТО	Telephoned other	Y	
TW	Telephoned consumer at work	Y	
SK	Skiptrace attempted		
TB	Telephone business	Y	
AP	Attempted to process payment		

Examples of Action codes include:

The most often used Action code is "TR – Telephoned consumer at residence," because that is what collectors predominantly do.

Code		Worked	Contacted
HU	Called party hung up	Y	
PD	Payment denied on processing	Y	
RV	Requested verification		Y
BK	Bankruptcy confirmed	Y	
СО	Comment only		
LB	Line busy		
LM	Left message live	Y	
LN	Left no forwarding address	Y	
LR	Left message on recorder	Y	
LV	Left message voice mail	Y	
NA	No answer	Y	
NH	No help	Y	
NI	Not in	Y	
DK	Didn't know	Y	
NL	No listing	Y	
NP	Non published number	Y	
TD	Temporarily disconnected	Y	
ТО	Consumer telephoned office	Y	
TT	Talked to consumer	Y	Y
TW	Talked with (other than consumer)	Y	Y

Examples of Result codes include:

Reports using Action and Result codes allow looking at the number of attempts, the number of attempts that result in contacts, etc. Applying dates and times to Action and Result codes could allow creation of informative reports about the length of time on a particular contact, the length of time between contacts, etc.

Section 15.5: Queue Level Indicators

Queue levels are usually three digit numbers running from 000 (for a particularly dated and timed reminder) to 999 (for account closed and returned to client), which show the particular urgency (000 being first or highest priority) of acting on a particular account. Queue levels may seem somewhat similar to status codes, but they are actually very different. While a status code indicates a particular account's position in a particular collections process, queue levels are what actually determine where and when a particular account is scheduled to appear at that position in the collections process. That is to say, a queue level determines when a particular file is queued to come up in front of a collector, supervisor, or some other worker for action on a scheduled date and time or particular set of circumstances. For example, new accounts are usually statused as "NEW" and set for a queue level of 015 in a collection process, which makes them come up fairly high in priority. If no collection notices were being sent before initial phone calls were to be made, these files would come up at the start of a collector's queue until they were acted up somehow. If initial collection notices are going to be used, however, once the accounts have been scrubbed, appended, and had initial collection notices sent, they may have a status set to L01 and a queue level set to 035 (Active business less than thirty-five days from first collection notice being mailed). Therefore, in a given work queue, the "lettered" files statused to L01 and queued at 035 would show up on a work screen well after of the NEW files needing a telephone call made on them.

Depending on the sophistication of the queuing system used, the "lettered" files may be suspended at a much higher queue number (834, for example) until thirty-five days after they were statused to L01 to allow the "Section 809 Verification Period" to quietly expire before allowing the files to show back up as maybe 016 and get some priority in a collectors work day.

Queue Level	Description of queue level
000	Reminder
010	Broken promise
011	No more postdated checks
012	Bounced checks
013	No more promises
015	New accounts
016	New business followup
018	Postdated transaction over \$500
019	No more postdated transactions in most recent payment plan
020	Accounts 0-30 days old
025	Accounts with a spontaneous payment
030	Accounts 30-60 days old
060	Accounts > 60-90 days
090	Accounts 90-120 days old
100	Account reassigned
120	Account Over 120 days old
200	Returned with credit report
400	Late night EST
401	Late night CST
402	Late night MST
403	Late night PST
425	Skip trace special

One example of a queuing scheme is:

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450	Custom level1
451	Custom level2
452	Custom level3
453	Customlevel4
454	Custom level5
455	Custom level6
599	Account worked
600	Clerical help
601	Get good home phone number
602	Send verification of account
610	Verify debt on bankruptcy schedule
666	Cease and desist
700	Supervisor help requested
800	Account on hold
820	Future promise
830	Post dated checks under \$500
840	Post dated credit card
875	Duplicate account
998	Closed account
999	Closed account returned

Queuing reports may be used in circumstances where a good status report may not be available (because, for example, only a limited number of statuses are used, etc.) or where less detailed or different information may be wanted. If a supervisor wants to see if a collector can handle another tranche of accounts the supervisor may want to see a queue report to look at the number of cases queued for priority calls (NEW business queued at 015). A low number of accounts at this queue level may indicate room for the new batch of files.

Queuing reports may also be useful to see how a collector is operating. A steady number of cases at each of the 030, 060, 090 queue levels may indicate that a collector is just making initial contacts on new 015 cases and then letting them languish for 30, 60 or 90 days without followup. A better situation is to have a large number of 015 cases and decreasing numbers of 030, 060, 090 queued cases showing that cases are being resolved as time marches on.

Like with Status codes, Action codes and Result codes, the application of dates and times to the assignment of queue levels may allow for meaningful reporting of the flow of cases from start to finish.

Section 15.6: Agency Account Payment and Balance Ledgers

Regardless of all of the details about Statuses, Action Codes, Result Codes, and Queue Levels, the real measure of any collector's activity "How much money did you collect on this account?" Each payment in either a single or multiple payment plan is entered and stored in the collection case management system.

Account payment information is used for three reasons:

- Processing payments as they mature
- Maintaining the current balance of the account
- Reporting the payments, current balance, and expected future payments to management and the client.

Depending on the use desired for a report, this "Amount Collected" report could be totaled by day, week, month, quarter, year and/or past or future life of the account.

In addition to the Amount Collected, other financial data elements can include Settlement Discount Amount (in dollars or percent of amount due), Post-Dated Transactions Pending (for current period or future lifetime of account), and Future Promises Pending. Sometimes these amounts are further segregated by payment method (check, credit cards, automated check handling transactions, etc.).

For payment plans using multiple payments, data elements may include number of payments, dates and amounts of constant payments, and dates and amounts of variable payments.

Another factor to consider is returned deposit items and declined transactions showing payments that were not able to be fully completed and, once having been declined, must then be reversed on the account.

Section 15.7: Roles

Having looked at length at the major types of data elements that can be assessed in the collections process, let us now shift our focus to the various ways to view and use this information in the collections process to determine which data elements need to be assessed and reported and when.

Collector

For their own internal operational and self-management requirements, collectors need to know the following things:

• Current queue's accounts summary overview (to review and prepare of the day's work ahead). This usually is contained in a software program's "Show me my

queue" menu choice.

- Current queue's account details by account (to work each account). This information is usually contained in a software program's "Work Screen."
- Future queueing specifics in varying levels of detail (for scheduling future contacts on an account while working on that account). This information is usually found in a software program's "Scheduling A Reminder or Followup" menu choice.
- Activity data showing number of files being attempted, contacted, and worked (to track daily or tp track other periodic progress), time on each call, average call time, calls over targeted limits. This information is usually found in a software program's "Audit A Collector" or "Collector Manager" menu choices. An ideal software application would have the ability to set goals for each of these metrics and reports that show comparisons of the actual metrics to the goals.
- Payment amounts posted to date in the current reporting periods (daily, weekly, monthly, etc, to keep track of progress of successful collections). This information is usually found in a software program's "Show Me My Payments" and/or "Collector Manager" menu choices and standard payment reports. Again, an ideal software application would have the ability to set goals for each of these metrics and reports that show comparisons of the actual metrics to the goals.
- Postdated transaction amounts pending to mature during the remainder of the current reporting period (to forecast attaining higher performance milestones for the rest of the month). This information is usually found in a software program's "Show Me My Payments" and/or "Collector Manager" menu choices and standard payment reports.
- Promise amounts pending to mature during the remainder of the current reporting period (also to forecast attaining higher performance milestones for the rest of the month, but with less certain collections). This information is usually found in a software program's "Show Me My Payments" and/or "Collector Manager" menu choices and standard payment reports.
- Settlement discounts details by account (to work each account). This information is usually found on a software program's work screen and can be

An ideal collections industry software solution should be capable of providing most, if not all, of this information in a reasonable fashion.

Collections Supervisors and Management Use of Information

In order to manage the collectors on his or her team, a Collections Supervisor will need access to all of the information used by a collector, individually, and compounded into a report showing the totals of all of the same information for all collectors on the supervisor's team. This information should be available from a collection software application's "Collector Manager" menu choice. In addition, a collections supervisor and higher management personnel will compile and use much of the information contained in

a computerized collections case management system for managing and controlling the agency's operations.

FDCPA with FTC Commentary and Practical Notes **In this appendix, you will:**

- Learn in significant detail the federal Fair Debt Collections Practices Act (the FDCPA)
- Discover the impact of the FDCPA on a debt collector's actions

Legal compliance is not the only thing that is important in the debt collection business. Actually collecting debts is the most important thing. Nonetheless, actually collecting debts without getting sued by recalcitrant debtors is a close second.

Both federal and state laws very heavily regulate the consumer credit industry. The major federal law concerning consumer credit is the consumer credit Protection Act (CCPA), which is comprised of many federal statutes, including the Truth in Lending Act (Title I), the Fair Credit Reporting Act (Title VI), and the Equal Credit Opportunity Act (Title VII) and the Fair Debt Collection Practices Act (Title VIII), the "Mother" of all consumer credit protection acts.

Because the FDCPA is so important and all encompassing of everything that a debt collector and agency does, it will be discussed by itself in excruciating detail as an individual appendix.

The Fair Debt Collection Practices Act.

The United States Congress first enacted the consumer credit Protection Act in 1968. Congress obviously felt that the CCPA was not preventing consumer abuse by debt collectors and in 1978, they greatly expand the CCPA by adding an entirely new title on to the end of the CCPA. (A Title is what Congress calls a bunch of laws in a complex Act) The Fair Debt Collection Practices Act is Title VIII of the CCPA.

The FDCPA only has eighteen (18) sections. These sections are:

- 801. Short Title
- 802. Congressional findings and declaration of purpose
- 803. Definitions
- 804. Acquisition of location information
- 805. Communication in connection with debt collection
- 806. Harassment or abuse
- 807. False or misleading representations
- 808. Unfair practice
- 809. Validation of debts
- 810. Multiple debts
- <u>811</u>. Legal actions by debt collectors
- 812. Furnishing certain deceptive forms
- <u>813</u>. Civil liability
- 814. Administrative enforcement

<u>815</u>. Reports to Congress by the Commission
<u>816</u>. Relation to State laws
<u>817</u>. Exemption for State regulation
818. Effective date

The FDCPA controls almost everything that a consumer debt collector either can do or must do in connection with a debt. The Federal Trade Commission (FTC), assisted by a slew of consumers' attorneys acting as private prosecutors, enforces the FDCPA. The FTC published its Official Staff Commentary on the FDCPA on December 13, 1988.

The operative sections of the FDCPA will be discussed in detail at three levels:

- What the FDCPA says;
- What the Federal Trade Commission says the FDCPA says, which is important because the FTC along with private attorneys enforces the FDCPA; and, finally,
- What the FDCPA really means from a practical standpoint (i.e. so that FTC and the slew of consumers' attorneys cannot sue the debt collector or the collection agency and win a judgment).

The best approach to fully cover and understand the FDCPA as the most significant piece of law that it is will be to read the Act, the FTC Staff Notes, and the Practical Notes in the following manner:

- Read all the way down the first column to get familiar with the FDCPA; then
- Read all the way down the second column to compare what the FDCPA says and what the FTC says that it says (the two are sometimes different); then
- Read the "Practical" column to see things to which you need to pay special attention in order to not violate the law either intentionally (which will cost you your job) or unintentionally (which may cost you and the company some money and may cost you your job).

§ 801. Short Title [15 USC 1601]

What theFDCPA says	What the FTC says the FDCPA says	What the FDCPA means practically
This title may be cited as the		
"Fair Debt Collection		
Practices Act."		

§ 802. Congressional findings and declarations of purpose [15 USC 1692]

- What theFDCPA says	What the FTC says the FDCPA says	What the FDCPA means practically
(a) There is abundant	What the FTC says the FDCFA says	Congress intended to put
evidence of the use of		a stop to abusive debt
abusive, deceptive, and		collection practices by
unfair debt collection		making the FDCPA a
practices by many debt		strict liability statute.
collectors. Abusive debt		Lack of intent to violate
collection practices		the FDCPA is, therefore,
contribute to the number of		· · · ·
		not a good defense if a
personal bankruptcies, to		violation is proven.
marital instability, to the		
loss of jobs, and to		
invasions of individual		
privacy.		
(b) Existing laws and		
procedures for redressing		
these injuries are inadequate		
to protect consumers.		
(c) Means other than		
misrepresentation or other		
abusive debt collection		
practices are available for		
the effective collection of		
debts.		
(d) Abusive debt collection		
practices are carried on to a		
substantial extent in		
interstate commerce and		
through means and		
instrumentalities of such		
commerce. Even where		
abusive debt collection		
practices are purely		
intrastate in character, they		
nevertheless directly affect		
interstate commerce.		
(e) It is the purpose of this		Essentially, the FDCPA is
title to eliminate abusive		designed to raise and level

debt collection practices by	the playing field for debt
debt collectors, to insure	collectors by making sure
that those debt collectors	that all debt collectors
who refrain from using	play by the same rules.
abusive debt collection	
practices are not	
competitively	
disadvantaged, and to	
promote consistent State	
action to protect consumers	
against debt collection	
abuses.	

What theFDCPA says	What the FTC says the FDCPA says	What the FDCPA means practically
As used in this title	· · · · · · · · · · · · · · · · · · ·	
(1) The term "Commission" means the Federal Trade Commission.	Section 803(1) defines "Commission" as the Federal Trade Commission.	
	1. General. The definition includes only the Federal Trade Commission, not necessarily the staff acting on its behalf.	
(2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.	Section 803(2) defines "communication" as the "conveying of information regarding a debt directly or indirectly to any person through any medium."	Almost anything that you say or do that conveys any information about a debt to anyone other than yourself is a "communication."
	 General. The definition includes oral and written transmission of messages which [sic] refer to a debt. Exclusions. The term 	This is the reason that the FDCPA controls almost every word that is spoken or put on a piece of paper or electronic media by a debt collector.
	does not include formal legal action (e.g., filing of a lawsuit or other petition/pleadings with a court; service of a complaint or other legal papers in connection with a lawsuit, or activities directly related to such service). Similarly, it does not include a notice that is required by law as a	Judges in court cases have, at times, ignored the exclusions from what is a communication. The FTC has also changed its mind on several of the exclusions contained in its most recently filed staff commentary, which is dated all the way back on December 13, 1988.
	prerequisite to enforcing a contractual obligation between creditor and debtor, by judicial or nonjudicial legal process. The term does not include situations in which the debt	Therefore, caution dictates that almost any word mentioning a consumer by name or mentioning any aspect of a debt in general or specific should be

§ 803. Definitions [15 USC 1692a]

	11 1	
	collector does not convey	considered to be a
	information regarding the	"communication about a
	debt, such as:	debt."
	A request to a third party	
	for a consumer to return a	
	telephone call to the debt	
	collector, if the debt	
	collector does not refer to	
	the debt or the caller's	
	status as (or affiliation	
	with) a debt collector.	
	A request to a third party	
	for information about the	
	debtor's assets, if the debt	
	collector does not reveal	
	the existence of a debt.	
	the existence of a debt.	
	A request to a third party in	
	connection with litigation	
	-	
	(e.g., requesting a third	
	party to complete a	
	military affidavit that must	
	be filed as a prerequisite to	
	enforcing a default	
	judgment, if the debt	
	collector does not reveal	
	the existence of the debt).	
(3) The term "consumer"	Section 803(3) defines	The FDCPA only protects
means any natural person	"consumer" as "any natural	people. Why? Probably
obligated or allegedly	person obligated or	because corporations
obligated to pay any debt.	allegedly obligated to pay	don't vote? No, really,
	any debt."	Congress apparently felt
		that people in business or
	1. General. The definition	people incurring debt for
	includes only a "natural	nonconsumer purposes
	person" and not an	were already able to
	artificial person such as a	adequately protect
	corporation or other entity	themselves.
	created by statute.	
(4) The term "creditor"	Section 803(4) defines	Original creditors,
means any person who	"creditor" as "any person	collecting their own debt,
offers or extends credit	who offers or extends	in their own name, are
creating a debt or to whom a	credit creating a debt or to	exempt for the FDCPA
debt is owed, but such term	whom a debt is owed."	r
		1

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.	However, the definition excludes a party who "receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another." 1. General. The definition includes the party that actually extended credit or became the obligee on an account in the normal course of business, and excludes [53 Fed. Reg. 50102] a party that was assigned a delinquent debt only for collection	Debt purchasers are not creditors entitled to protection given to an original "creditor" under the FDCPA.
(5) The term "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.	purposes.Section 803(5) defines"debt" as a debtor's"obligation to paymoney arising out of atransaction in which themoney, property,insurance, or services(being purchased) areprimarily for personal,family, or householdpurposes"1. Examples. The termincludes:Overdue obligations suchas medical bills that wereoriginally payable in fullwithin a certain time period(e.g., 30 days).A dishonored check thatwas tendered in paymentfor goods or servicesacquired or used primarilyfor personal, family, or	If the debt is not for personal, family, or household purposes, then the FDCPA does not apply. Whether the extension of a payment plan for an account that was originally a "consumer" account is an open question. This has implications as to whether Regulation E of the Electronic Fund Transfers Act and Regulation Z of the Truth In Lending Act apply to payment plans.

	household purposes.	
	A student loan, because the debtor is purchasing "services" (education) for personal use.	
	2. Exclusions. The term does not include:	
	Unpaid taxes, fines, alimony, or tort claims, because they are not debts incurred from a "transaction (involving purchase of) property or services for personal, family or household purposes."	
	A credit card that a cardholder retains after the card issuer has demanded its return. The cardholder's account balance is the debt.	
	A non-pecuniary obligation of the debtor such as the responsibility to maintain adequate insurance on the collateral, because it does not involve an "obligation . to pay money."	
(6) The term "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	Section 803(6) defines "debt collector" as a party "who uses any instrumentality of interstate commerce or the mails in . collection of debts owed another." 1. Examples. The term	There is no way for an individual debt collector to hide behind a corporation or behind his or her status as an employee and claim "Well, I was just doing what I was told to do."
attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.	Employees of a debt collection business,	Liability for violating the FDCPA attaches to every individual debt collection and the debt collection

Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 808(6), such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include	 including a corporation, partnership, or other entity whose business is the collection of debts owed another. A firm that regularly collects overdue rent on behalf of real estate owners, or periodic assessments on behalf of condominium associations, because it "regularly collects debts owed or due another." A party based in the United States who collects debts owed by consumers residing outside the United States, because he "uses . the mails" in the collection business. The residence of the debtor is irrelevant. 	agency for which each debt collector works. A debt collector is more politely and progressively referred to as a "collection debt collector" or a "consumer debt collector." Because the FDCPA uses the antiquated term "debt collector," however, we will continue to use it interchangeably while discussing the FDCPA.
	A firm that collects debts in its own name for a creditor solely by mechanical techniques, such as (1) placing phone calls with pre-recorded messages and recording consumer responses, or (2) making computer- generated mailings. An attorney or law firm whose efforts to collect consumer debts on behalf of its clients regularly include activities traditionally associated with debt collection, such as sending demand letters (dunning notices) or	

making collection telephone calls to the consumer. However, an attorney is not considered to be a debt collector simply because he responds to an inquiry from the debtor following the filing of a lawsuit.	
2. Exclusions. The term does not include:	
Any person who collects debts (or attempts to do so) only in isolated instances, because the definition includes only those who "regularly" collect debts.	
A credit card issuer that collects its cardholder's account, even when the account is based upon purchases from participating merchants, because the issuer is collecting its own debts, not those "owed or due another."	
An attorney whose practice is limited to legal activities (e.g., the filing and prosecution of lawsuits to reduce debts to judgment).	
3. Application of definition to creditor using another name. Creditors are generally excluded from the definition of "debt collector" to the extent that they collect their own debts in their own name. However, the term	

specifically applies to "any	
creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is" involved in the collection.	
A creditor is a debt collector for purposes of this act if:	
He uses a name other than his own to collect his debts, including a fictitious name.	
His salaried attorney employees who collect debts use stationery that indicates that attorneys are employed by someone other than the creditor or are independent or separate from the creditor (e.g., ABC Corp. sends collection letters on stationery of "John Jones, Attorney-at-Law").	
He regularly collects debts for another creditor; however, he is a debt collector only for purposes of collecting these debts, not when he collects his own debt in his own name.	
The creditor's collection division or related corporate collector is not clearly designated as being affiliated with the creditor; however, the creditor is not a debt collector if the	

	 creditor's correspondence is clearly labeled as being from the "collection unit of the (creditor's name)," since the creditor is not using a "name other than his own" in that instance. Relation to other sections. A creditor who is covered by the FDCPA because he uses a "name other than his own" also may violate section 807(14), which prohibits using a false business name. When he falsely uses an attorney's name, he violates section 807(3). 4. Specific exemptions from the definition of debt collector are: 	This is the specific exemption that a collection department of a company should use. For example, the collection department of one company calls itself X Co. Consumer Debt collection Service, the collection department of X Co.
(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;	 (a) Creditor employees. Section 803(6)(A) provides that "debt collector" does not include "any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor." The exemption includes a collection agency employee, who works for a creditor to collect in the creditor's name at the creditor's office under the creditor's supervision, because he has become the de facto employee of the creditor. The exemption includes a creditor salaried attorney (or other) employee who 	Questions often arise when an employee of a creditor (a receptionist/bookkeeper for a doctor's office, for example) does things that a debt collector cannot do. As long as the employee is collecting the employer's debt in the employer's name, the FDCPA does not apply. Nonetheless, the general FTC Act prohibiting unfair trade practices does apply and many courts have held that an FDCPA exempt employee doing things that would violate FDCPA is guilty of FTC Act unfair trade practices.

	collects debts on behalf of,	
	and in the name of, that	
	creditor.	
	The exemption does not	
	include a creditor's former	
	employee who continues to	
	collect accounts on the	
	creditor's behalf, if he acts	
	under his own name rather	
	than the creditor's.	
(B) any person while acting	(b) Creditor-controlled	
as a debt collector for	collector. Section	
another person, both of	803(6)(B) provides that	
whom are related by	"debt collector" does not	
common ownership or	include a party collecting	
affiliated by corporate	for another, where they are	
control, if the person acting	both "related by common	
as a debt collector does so	ownership or affiliated by	
only for persons to whom it	corporate control, if the	
is so related or affiliated and	(party collects) only for	
if the principal business of	persons to whom it is so	
such person is not the	related or affiliated and if	
collection of debts;	the principal business of	
	such person is not the	
	collection of debts."	
	The exemption applies	
	where the collector and	
	creditor have "common	
	ownership or corporate	
	control." For example, a	
	company is exempt when it	
	attempts to collect debts of	
	another company after the	
	two entities have merged.	
	The exemption does not	
	apply to a party related to a	
	creditor if it also collects	
	debts for others in addition	
	to the related creditors.	
(C) any officer or employee	(c) State and federal	
of the United States or any	officials. Section 803(6)(C)	
State to the extent that	provides that "debt	
collecting or attempting to	collector" does not include	
concerning of attempting to	concetor aces not mendae	

collect any debt is in the performance of his official duties;any state or federal employee "to the extent that collecting or attempting to collect any debt is in the performance of his official duties."The exemption applies only to such governmental employees in the performance of their "official duties" and,	
duties; that collecting or attempting to collect any debt is in the performance of his official duties." The exemption applies only to such governmental employees in the performance of their	
attempting to collect any debt is in the performance of his official duties." The exemption applies only to such governmental employees in the performance of their	
debt is in the performance of his official duties."The exemption applies only to such governmental employees in the performance of their	
of his official duties." The exemption applies only to such governmental employees in the performance of their	
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only to such governmental employees in the performance of their	
only to such governmental employees in the performance of their	
employees in the performance of their	
performance of their	
L OTTICIAL dufies" and	
therefore, does not apply to	
an attorney employed by a	
county government who	
also collects bad checks for	
local merchants where that	
activity is outside his	
official duties. [53 Fed.	
Reg. 50103]	
The exemption includes a	
state educational agency	
that is engaged in the	
collection of student loans.	
(D) any person while (d) Process servers. Section	
serving or attempting to 803(6)(D) provides that	
serve legal process on any "debt collector" does not	
other person in connection include "any person while	
with the judicial serving or attempting to	
enforcement of any debt; serve legal process on any	
other person in connection	
with the judicial	
enforcement of any debt."	
The exemption covers	
marshals, sheriffs, and any	
other process servers while	
conducting their normal	
duties relating to serving	
legal papers.	
(E) any nonprofit (e) Non-profit counselors.	
organization which, at the Section 803(6)(E) provides	
request of consumers, that "debt collector" does	
performs bona fide not include "any nonprofit	
consumer credit counseling organization which, at the	

and assists consumers in the	request of consumers	
liquidation of their debts by	request of consumers, performs bona fide	
receiving payments from	consumer credit counseling	
such consumers and	and assists consumers in	
distributing such amounts to	the liquidation of their	
creditors; and	debts by receiving	
	payments from such	
	consumers and distributing	
	such amounts to creditors."	
	This exemption applies	
	only to non-profit	
	organizations; it does not	
	apply to for-profit credit	
	counseling services that accept fees from debtors	
	and regularly transmit such	
	funds to creditors.	
(F) any person collecting or	(f) Miscellaneous. Section	
attempting to collect any	803(6)(F) provides that	
debt owed or due or asserted	"debt collector" does not	
to be owed or due another to	include collection activity	
the extent such activity (i) is	by a party about a debt that	
incidental to a bona fide	"(i) is incidental to a bona	
fiduciary obligation or a	fide fiduciary obligation or	
bona fide escrow	escrow arrangement;	
arrangement; (ii) concerns a	(ii) was originated by	
debt which was originated	such person; (iii) was	
by such person; (iii)	not in default at the time it	
concerns a debt which was	was obtained by such	
not in default at the time it	person; or (iv) [was]	
was obtained by such	obtained by such person as	
person; or (iv) concerns a	a secured party in a	
debt obtained by such	commercial credit	
person as a secured party in a commercial credit	transaction involving the	
transaction involving the	creditor."	
creditor.	The exemption (i) for bona	
	fide fiduciary obligations	
	or escrow arrangements	
	applies to entities such as	
	trust departments of banks,	
	and escrow companies. It	
	does not include a party	
	who is named as a debtor's	
	trustee solely for the	

	1	1
	secured party in a commercial transaction applies to a commercial lender who acquires a consumer account that was used as collateral, following default on a loan from the commercial lender to the original creditor.	
(g) Attorneys. Repealed	(g) Attorneys. A provision of the FDCPA, as enacted in 1977 (former section 803(6)(F)), providing that "debt collector" does not include "any attorney-at- law collecting a debt as an attorney on behalf of and in the name of a client," was repealed by Pub. L. 99- 361, which became effective in July 1986. Therefore, an attorney who meets the definition set forth in section 803(6) is now covered by the FDCPA.	
(7) The term "location information" means a debtor's place of abode and his telephone number at such place, or his place of employment.	Section 803(7) defines "location information" as "a debtor's place of abode and his telephone number at such place, or his place of employment." This definition includes only residence, home phone number, and place of employment. It does not cover work phone numbers, names of supervisors and their telephone numbers, salaries or dates of paydays.	
(8) The term "State" means any State, territory, or possession of the United	Section 803(8) defines "state" as "any State, territory, or possession of	

States, the District of	the United States, the	
Columbia, the	District of Columbia, the	
Commonwealth of Puerto	Commonwealth of Puerto	
Rico, or any political	Rico, or any political	
subdivision of any of the	subdivision of any of the	
foregoing.	foregoing."	

What theFDCPA says	What the FTC says the FDCPA says	What the FDCPA means practically
Any debt collector	Section 804 requires a debt	"Any person other than
communicating with any	collector, when	the consumer" is often
person other than the debtor	communicating with third	referred to as a "third
for the purpose of acquiring	parties for the purpose of	party."
location information about	acquiring information	
the debtor shall	about the debtor's location	(This should not be
	to (1) "identify himself,	confused with the type of
	state that he is confirming	collections referred to as
	or correcting location	"third party collections.")
	information concerning the	······ ,
	consumer, and, only if	Almost the only reason
	expressly requested,	that a debt collector can
	identify his employer"; (2)	communicate with a third
	not refer to the debt, (3)	party is to collect location
	usually make only a single	information and even if
	contact with each third	the communication is
	party, (4) not communicate	being done for this limited
	by post card, (5) not	purposed, it must be done
	indicate the collection	in strict compliance with
	nature of his business	Section 804.
	purpose in any written	Section 804.
	communication, and (6)	
	limit communications to	
	the debtor's attorney,	
	where the collector knows	
	of the attorney, unless the	
	attorney fails to respond to	
	the communication.	
	1 Conoral Although the	
	1. General. Although the FDCPA generally protects	
	• • • •	
	the debtor's privacy by limiting debt collector	
	e	
	communications about	
	personal affairs to third	
	parties, it recognizes the	
	need for some third party	
	contact by collectors to	
	seek the whereabouts of	
(1) identify himself state	the consumer.	Do not montion that war
(1) identify himself, state	2. Identification of debt	Do not mention that you
that he is confirming or	collector (Section 804(1)).	are a debt collector or the
correcting location	An individual employed by	name of your company
information concerning the	a debt collector seeking	unless you are specifically

§ 804. Acquisition of location information [15 USC 1692b

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consumer, and, only if expressly requested, identify his employer;	location information must identify himself, but must not identify his employer unless asked. When asked, however, he must give the true and full name of the employer, to comply with this provision and avoid a violation of section 807(14).	required to by the third party.
	An individual debt collector may use an alias if it is used consistently and if it does not interfere with another party's ability to identify him (e.g., the true identity can be ascertained by the employer).	
(2) not state that such consumer owes any debt;	3. Referral to debt (Section 804(2)). A debt collector may not refer to the debtor's debt in any third party communication seeking location information, including those with other creditors.	Never even hint to the very existence of a debt to a third party. The third party is almost always going to ask, "Well, why are you trying to locate [the consumer]?" Whenever such a question is asked, merely reply, "I am simply trying to confirm or correct location information on [the debtor's name]. Do you know his or her home address, home phone number or place of employment?
(3) 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		One call is usually all you get to any particular third party.

that such person now has correct or complete location		
information;		
(4) not communicate by post		
card;		
(5) not use any language or	4. Reference to debt	
symbol on any envelope or	collector's business	
in the contents of any	(Section 804(5)). A debt	
communication effected by	collector may not use his	
the mails or telegram that	actual name in his	
indicates that the debt	letterhead or elsewhere in a	
collector is in the debt	written communication	
collection business or that	seeking location	
the communication relates	information, if the name	
to the collection of a debt;	indicates collection activity	
and	(such as a name containing	
	the word "debt,"	
	"collector," or	
	"collection"), except when	
	the person contacted has	
	expressly requested that the	
	debt collector identify	
	himself.	
(6) after the debt collector	5. Communication with	The key question to ask
knows the debtor is	debtor's attorney (Section	when a consumer says
represented by an attorney	804(6)). Once a debt	that he or she has an
with regard to the subject	collector learns a consumer	attorney is, "Is that
debt and has knowledge of,	is represented by an	attorney representing you
or can readily ascertain,	attorney in connection with	on this particular debt?"
such attorney's name and	the debt, he must confine	If the attacmany is
address, not communicate	his request for location	If the attorney is
with any person other than	information to the attorney.	representing the debtor on
that attorney, unless the	(See also comments on $805(a)(2)$)	a divorce and a debt
attorney fails to respond	section 805(a)(2).)	collector is calling about a
within a reasonable period of time to the		past due credit card bill,
communication from the		then the requirement to
debt collector.		communicate only with
		the attorney may not
		apply.

§ 805. Communication in connection with debt collection [15 USC 1692c]

10920]		
What theFDCPA says	What the FTC says the FDCPA says	What the FDCPA means practically
(a) COMMUNICATION	Section 805(a)	
WITH THE DEBTOR	Communication with the	
GENERALLY. Without the	consumer. Unless the	
prior consent of the debtor	debtor has consented or a	
given directly to the debt	court order permits, a debt	
collector or the express	collector may not	
permission of a court of	communicate with a	
competent jurisdiction, a	consumer to collect a debt	
debt collector may not		
communicate with a		
consumer in connection		
with the collection of any		
debt		
(1) at any unusual time or	(1) at any time or place	
place or a time or place	which is unusual or known	
known or which should be	to be inconvenient to the	
known to be inconvenient to	debtor (8AM-9PM is	
the consumer. In the	presumed to be	
absence of knowledge of	convenient), (2) where he	
circumstances to the	knows the debtor is	
contrary, a debt collector	represented by an attorney	
shall assume that the	with respect to the debt,	
convenient time for	unless the attorney fails to	
communicating with a	respond to the	
consumer is after 8 o'clock	communication in a	
antimeridian and before 9	reasonable time period, or	
o'clock postmeridian, local	(3) at work if he knows the	
time at the debtor's location;	debtor's employer	
time at the debtor's location,	prohibits such contacts.	
	promotes such contacts.	
	1. Scope. For purposes of	
	this section, the term	
	"communicate" is given its	
	commonly accepted	
	meaning. Thus, the section	
	applies to contacts with the debtor related to the	
	collection of the debt,	
	whether or not the debt is	
	specifically mentioned. [53	
	Fed. Reg. 50104]	
	2 Inconvenient or ways	
	2. Inconvenient or unusual	

	times or places (Section	
	805(a)(1)). A debt collector	
	may not call the debtor at	
	any time, or on any	
	particular day, if he has	
	credible information (from	
	the debtor or elsewhere)	
	that it is inconvenient. If	
	the debt collector does not	
	have such information, a	
	call on Sunday is not per se	
	illegal.	
(2) if the debt collector	3. Consumer represented	
knows the debtor is	by attorney (Section	
represented by an attorney	805(a)(2)). If a debt	
with respect to such debt	collector learns that a	
and has knowledge of, or	consumer is represented by	
can readily ascertain, such	an attorney in connection	
attorney's name and address,	with the debt, even if not	
unless the attorney fails to	formally notified of this	
respond within a reasonable	fact, the debt collector	
period of time to a	must contact only the	
communication from the	attorney and must not	
debt collector or unless the		
	contact the consumer.	
attorney consents to direct		
communication with the	A debt collector who	
consumer; or	knows a consumer is	
	represented by counsel	
	with respect to a debt is not	
	required to assume similar	
	representation on other	
	debts; however, if a	
	consumer notifies the debt	
	collector that the attorney	
	has been retained to	
	represent him for other	
	debts placed with the debt	
	collector, the debt collector	
	must deal only with that	
	attorney with respect to	
	such debts. The creditor's	
	knowledge that the debtor	
	has an attorney is not	
	automatically imputed to	
	the debt collector.	
(3) at the debtor's place of	4. Calls at work (Section	

employment if the debt collector knows or has reason to know that the debtor's employer prohibits the debtor from receiving such communication.	805(a)(3)). A debt collector may not call the debtor at work if he has reason to know the employer forbids such communication (e.g., if the debtor has so informed the debt collector).	
(b) COMMUNICATION WITH THIRD PARTIES. Except as provided in section 804, without the prior consent of the debtor 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.	Section 805(b) Communication with third parties. Unless the debtor consents, or a court order or section 804 permits, "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 the 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."	
	if a third party volunteers that a consumer has authorized him to pay the debtor's account, the debt collector may normally presume the debtor's consent, and may accept the payment and provide a receipt to the party that makes the payment. However, consent may not be inferred only from a debtor's inaction when the	

debt collector requests such	
consent.	
2. Location information.	
Although a debt collector's	
search for information	
concerning the debtor's	
location (provided in	
section 804) is expressly	
excepted from the ban on	
third party contacts, a debt	
collector may not call third	
parties under the pretense	
of gaining information	
already in his possession.	
3. Incidental contacts with	
telephone operator or telegraph clerk. A debt	
0 1	
collector may contact an	
employee of a telephone or	
telegraph company in order	
to contact the consumer,	
without violating the	
prohibition on	
communication to third	
parties, if the only	
information given is that	
necessary to enable the	
collector to transmit the	
message to, or make the	
contact with, the consumer.	
4. Accessibility by third	
party. A debt collector may	
not send a written message	
that is easily accessible to	
third parties. For example,	
he may not use a	
computerized billing	
statement that can be seen	
on the envelope itself.	
per second	
A debt collector may use	
an "in care of" letter only if	
the debtor lives at, or	
the debiti nives at, or	<u> </u>

accepts mail at, the other	
party's address.	
A debt collector does not violate this provision when an eavesdropper overhears a conversation with the consumer, unless the debt collector has reason to anticipate the conversation will be overhead.	
5. Non-excepted parties. A debt collector may discuss the debt only with the parties specified in this section (consumer, creditor, a party's attorney, or credit bureau). For example, unless the debtor has authorized the communication, a collector may not discuss the debt (such as a dishonored check) with a bank, or make a report on a consumer to a non-profit counseling service.	
6. Judicial remedy. The words "as reasonably necessary to effectuate a postjudgment judicial remedy" mean a communication necessary for execution or enforcement of the remedy. A debt collector may not send a copy of the judgment to an employer, except as part of a formal service of papers to achieve a garnishment or other remedy.	
7. Audits or inquiries. A	

	debt collector may disclose	
	his files to a government	
	official or an auditor, to	
	respond to an inquiry or	
	1 1 1	
	conduct an audit, because	
	the disclosure would not be	
	"in connection with the	
	collection of any debt."	
	-	
	8. Communications by	
	attorney debt collectors.	
	An attorney who represents	
	either a creditor or debt	
	collector that has	
	previously tried to collect	
	an account may	
	communicate his efforts to	
	collect the account to the	
	debt collector. Because the	
	section permits a debt	
	collector to communicate	
	with "the attorney of the	
	•	
	creditor, or the attorney of	
	the debt collector,"	
	communications between	
	these parties (even if the	
	attorney is also a debt	
	collector) are not	
	forbidden.	
	An attorney may	
	An attorney may	
	communicate with a	
	potential witness in	
	connection with a lawsuit	
	he has filed (e.g., in order	
	to establish the existence of	
	a debt), because the section	
	was not intended to	
	prohibit communications	
	by attorneys that are	
	necessary to conduct	
	lawsuits on behalf of their	
	clients.	
(c) CEASING	Section 805(c) Ceasing	Courts often hold that a
	a manual action Once a	a all a star face of with a
COMMUNICATION. If a	communication. Once a	collector faced with a

collector in writing that the debtor refuses to pay a debt or that the debtor wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the debtor with respect to such debt, except – (1) to advise the debtor that the debt collector's further efforts are being terminated; (2) to notify the debtor that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or (3) where applicable, to notify the debtor that the debt collector or creditor intends to invoke a specified remedy.	 written notice from a consumer that he or she refuses to pay the debt or wants the collector to stop further collection efforts, the debt collector must cease any further communication with the debtor except "(1) to advise the debtor that the debt collector's further efforts are being terminated; (2) to notify the debtor that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or (3) where applicable, to notify the debtor that the debt collector or creditor intends to invoke a specified remedy." Scope. For purposes of this section, the term "communicate" is given its commonly accepted meaning. Thus, the section applies to any contact with the debtor related to the collector's response to a "cease communication" notice from the debtor may not include a demand for payment, but is limited to the three statutory exceptions. 	only get one more communication. Some debt collectors us up their one more communication by calling the debtor up and trying to talk the debtor into retracting the cease and desist request by informing the debtor that the collection agency or creditor may have no choice but to proceed with a legal review of the case. This is a very dangerous tactic. First, the information that the creditor may sue must be credibly true. Second, the contact cannot include any mention that such further actions can be stopped by paying the bill, because such would be a "demand for payment" which is not allowed.
debtor is made by mail, notification shall be		not apply. The notice must actually be received

complete upon receipt.	by the collector.
section, the term "consumer" includes the debtor's spouse, parent (if the debtor is a minor), guardian, executor, or administrator. 1. Br define broad of "c purper many exter the c exam may spous know to the he m (guar any t woul	O5(d) er" definition. For b5 purposes, the usumer" includes or's spouse, the debtor is a uardian, executor, strator."Note that "attorney-in- fact" is not included in the list of who might be a consumer. Sometimes, someone may claim that they have a power of attorney for a debtor's financial affairs and ask the debt collector to discuss the case with them."consumer" t. Because of the rutory definition mer" for the of this section, ts protections parties close to attime or place be inconvenient uuse. Conversely, all the spouse , executor, etc.) at or place that in accord with tions of sectionThe debt collector should first ask if the debtor is incompetent. If the answer is no, then the debt collector must obtain the debtor's consent directly before continuing to speak with the attorney-in-fact.People who are caring for incompetent unmarried family members or friends without having been appointed guardian will often say that they have power of attorney from the consumer. The statute, however, requires "the prior consent of the debtor given directly to the debt collector is in a catch-22 situation arises, the debt

in-fact.
in-fact. The technically correct solution is to communicate in writing sent to the debtor explaining the situation and suggesting the appointment of a guardian or a written copy of the power of attorney. If a written power of attorney is provided, then it is unlikely that any legal action may follow further
communication with the
attorney-in-fact.
Nonetheless, great care
should be used in these
circumstances.

What theFDCPA says	What the FTC says the FDCPA says	What the FDCPA means practically Harrassment is the most
A debt collector may not	Section 806 prohibits a	
engage in any conduct the	debt collector from any	common oral claim made
natural consequence of	conduct that would	by consumers to debt
which is to harass, oppress,	"Harass, oppress, or abuse	collectors calling them.
or abuse any person in	any person in connection	Though this section lists
connection with the	with the collection of a	six things that may be
collection of a debt. Without	debt." It provides six	harassment, oppression,
limiting the general	examples of harassment or	or abuse, almost anything
application of the foregoing,	abuse.	taken to extreme could
the following conduct is a		constitute harassment.
violation of this section:	1. Scope. Prohibited	
	actions are not limited to	Debt collectors are
	the six subsections listed as	advised to adhere to the
	[53 Fed. Reg. 50105]	"Grandmother Rule." If it
	examples of activities that	would upset you that
	violate this provision.	someone did something to
	-	your grandmother, then
	2. Unnecessary calls to	don't do that to anyone
	third parties. A debt	else.
	collector may not leave	
	telephone messages with	The examples in the
	neighbors when the debt	statute speak for
	collector knows the	themselves.
	debtor's name and	
	telephone number and	
	could have reached him	
	directly.	
	uncerty.	
	3. Multiple contacts with	
	consumer. A debt collector	
	may not engage in repeated	
	personal contacts with a	
	consumer with such	
	frequency as to harass him.	
	Subsection (5) deals	
	specifically with	
	harassment by multiple	
	phone calls.	
	4. Abusive conduct. A debt	
	collector may not pose a	
	lengthy series of questions	
	or comments to the debtor	
	without giving the debtor a	
	without giving the debiol a	

§ 806. Harassment or abuse [15 USC 1692d]

		<u> </u>
	chance to reply. Subsection (2) deals specifically with	
	harassment involving	
	obscene, profane, or	
	abusive language.	
(1) The use or threat of use	Section 806(1) prohibits	
of violence or other criminal	the "use or threat of use of	
means to harm the physical	violence or other criminal	
person, reputation, or	means to harm any	
property of any person.	person."	
	1. Implied threat. A debt	
	collector may violate this	
	section by an implied	
	threat of violence. For	
	example, a debt collector	
	may not pressure a	
	consumer with statements	
	such as "We're not playing	
	around here—we can play	
	tough" or "We're going to	
	send somebody to collect	
	for us one way or the	
	other."	
(2) The use of obscene or	Section 806(2) prohibits	
profane language or	the use of obscene,	
language the natural	profane, or abusive	
consequence of which is to	language.	
abuse the hearer or reader.		
	1. Abusive language.	
	Abusive language includes	
	religious slurs, profanity,	
	obscenity, calling the	
	debtor a liar or a deadbeat,	
	and the use of racial or	
(2) The multiplication of -1	sexual epithets.	
(3) The publication of a list	Section 806(3) prohibits	
of consumers who allegedly	the "publication of a list of	
refuse to pay debts, except to a consumer reporting	consumers who allegedly refuse to pay debts," except	
agency or to persons	to report the items to a	
meeting the requirements of	"consumer reporting	
section 603(f) or 604(3)1 of	agency," as defined in the	
this Act.	Fair Credit Reporting Act	
	or to a party otherwise	
	authorized to receive it	
		L

	under that Act.	
(4) The advertisement for	Section 806(4) prohibits	
sale of any debt to coerce	the "advertisement for sale	
payment of the debt.	of any debt to coerce	
payment of the debt.	payment of the debt."	
	payment of the debt.	
	1. Shaming prohibited.	
	These provisions are	
	designed to prohibit debt	
	collectors from "shaming"	
	a customer into payment,	
	by publicizing the debt.	
	by publicizing the debt.	
	2 Exchange of lists Dabt	
	2. Exchange of lists. Debt collectors may not	
	exchange lists of	
	consumers who allegedly	
	refuse to pay their debts.	
	refuse to pay then debts.	
	3. Information to creditor	
	subscribers. A debt	
	collector may not distribute	
	a list of alleged debtors to	
	its creditor subscribers.	
	its creditor subscribers.	
	4. Coded lists. A debt	
	collector that publishes a	
	list of consumers who have	
	had bad debts, coded to	
	avoid generally disclosing	
	the debtor's identity (e.g.,	
	showing only the drivers	
	license number and first	
	three letters of each	
	debtor's name) does not	
	violate this provision,	
	because such publication is	
	permitted under the Fair	
	Credit Reporting Act.	
	create reporting ret.	
	5. List for use by	
	investigator. A debtor	
	collector does not violate	
	these provisions by	
	providing a list of	
	consumers against whom	
	consumers against whom	L

	judgments have been entered to a private investigator in order to locate such individuals, because section 805(b) specifically permits contacts "reasonably necessary to effectuate a post-judgment judicial remedy."	
	6. Public notice required by law. A debt collector does not violate these provisions by providing public notices that are required by law as a prerequisite to enforcement of a security interest in connection with a debt.	
(5) 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.	Section 806(5) prohibits contacting the debtor by telephone "repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number." 1. Multiple phone calls. "Continuously" means	Calling back once on a "hang up" to be sure that you weren't disconnected should not be held to be with intent to annoy, abuse or harass. Calling back twice after two hang-ups or more than once after a hangup and a no answer, may be held to
	making a series of telephone calls, one right after the other. "Repeatedly" means calling with excessive frequency under the circumstances.	violate this prohibition.
(6) Except as provided in section 804, the placement of telephone calls without meaningful disclosure of the caller's identity.	Section 806(6) prohibits, except where section 804 applies, "the placement of telephone calls without meaningful disclosure of the caller's identity."	Meaningful disclosure means the name of the caller (using an alias if allowed by state law in the debtor's jurisdiction) and the name of the collection agency.
	1. Aliases. A debt collector employee's use of an alias	This issue often comes up

that permits identification	in situations discussing
of the debt collector (i.e.,	Caller ID on telephones
where he uses the alias	and voicemails.
consistently, and his true	
identity can be ascertained	Because Caller ID and
by the employer)	voicemails may be
constitutes a "meaningful	received by third parties,
disclosure of the caller's	never transmit your
identity."	agecy's name if it
	indicates that you are in
2. Identification of caller.	the debt collection
An individual debt	business. The best
collector must disclose his	solution for leaving
employer's identity, when	voicemails is to adopt a
discussing the debt on the	company name that does
telephone with consumers	not indicate being in the
or third parties permitted	debt collection business,
	such as Generic DCS, Inc.
by section 805(b).	such as Generic DCS, Inc.
3. Relation to other	
sections. A debt collector	
who uses a false business	
name in a phone call to	
conceal his identity	
violates section 807(14), as	
well as this section.	

What theFDCPA says	What the FTC says the FDCPA says	What the FDCPA means practically
A debt collector may not use	Section 807 prohibits a	A false and misleading
any false, deceptive, or	debt collector from using	representation is a very
	any "false, deceptive, or	broadly defined term.
misleading representation or means in connection with	•	broadly defined term.
	misleading representation	Deine almost and a state
the collection of any debt.	or means in connection	Doing almost any act that
Without limiting the general	with the collection of any	is designed to make a
application of the foregoing,	debt." It provides sixteen	consumer do anything that
the following conduct is a	examples of false or	the debtor would not
violation of this section:	misleading representations.	ordinarily do absent that
		act, could be considered a
	1. Scope. Prohibited	false and misleading
	actions are not limited to	representation.
	the sixteen subsections	
	listed as examples of	It is always best to stick
	activities that violate this	with a strict interpretation
	provision. In addition,	of the "Honor Code" used
	section 807(10), which	in most schools: "Never
	prohibits the "use of any	lie, cheat, or steal or
	false representation or	tolerate those who do."
	deceptive means" by a debt	
	collector, is particularly	The examples speak for
	broad and encompasses	themselves.
	virtually every violation,	
	including those not covered	
	by the other subsections.	
(1) The false representation	Section 807(1) prohibits	
or implication that the debt	"the false representation or	
collector is vouched for,	implication that the debt	
bonded by, or affiliated with	collector is vouched for,	
the United States or any	bonded by, or affiliated	
State, including the use of	with the United States or	
any badge, uniform, or	any State"	
facsimile thereof.		
	1. Symbol on dunning	
	notice. A debt collector	
	may not use a symbol in	
	correspondence that makes	
	him appear to be a	
	government official. For	
	example, a collection letter	
	depicting a police badge, a	
	judge, or the scales of	
	justice, normally violates	
	this section.	

§ 807. False or misleading representations [15 USC 1692e]

(2) The false representation	Section 807(2) prohibits	
of –	falsely representing either	
	"(A) the character, amount,	
(A) the character, amount,	or legal status of any debt;	
or legal status of any debt;	or (B) any services	
or	rendered or compensation	
	which may be lawfully	
(B) any services rendered or	received by" the collector.	
compensation which may be		
lawfully received by any	1. Legal status of debt. A	
debt collector for the	debt collector may not	
collection of a debt.	falsely imply that legal	
concetion of a debt.		
	action has begun.	
	2 American filely Allely	
	2. Amount of debt. A debt	
	collector may not claim an	
	amount more than actually	
	owed, or falsely assert that	
	the debt has matured or	
	that it is immediately due	
	and payable, when it is not.	
	3. Judgment. When a debt	
	collector provides the	
	validation notice required	
	by section $809(a)(4)$, the	
	notice may include the	
	words "copy of a	
	judgment" whether or not a	
	judgment exists, because	
	section 809(a)(4) provides	
	for a statement including	
	these words. Compliance	
	with section $809(a)(4)$ in	
	this manner will not be	
	considered a violation of	
	section $807(2)(A)$.	
(3) The false representation	Section 807(3) prohibits	
or implication that any	falsely representing or	
individual is an attorney or	implying that "any	
-	individual is an attorney or	
that any communication is		
from an attorney.	that any communication is	
	from an attorney."	
	1 Form of least	
	1. Form of legal	
	correspondence. A debt	

	collector may not send a	
	collection letter from a	
	"Pre-Legal Department,"	
	where no legal department	
	exists. An attorney may use	
	a computer service to send	
	letters on his own behalf,	
	but a debt collector may	
	not send a computer-	
	generated letter deceptively	
	using an attorney's name.	
	using an attorney shame.	
	2. Named individual. A	
	debt collector may not falsely represent that a	
	• •	
	person named in a letter is	
	his attorney.	
	2 Deletion to other	
	3. Relation to other	
	sections. If a creditor	
	falsely uses an attorney's	
	name rather than his own	
	in his collection	
	communications, he both	
	loses his exemption from	
	the FDCPA's definition of	
	"debt collector" (Section	
	803(6)) and violates this	
	provision.	
(4) The representation or	Section 807(4) prohibits	
implication that nonpayment	falsely representing or	
of any debt will result in the	implying to the debtor that	
arrest or imprisonment of	nonpayment "will result in	
any person or the seizure,	the arrest or imprisonment	
garnishment, attachment, or	of any [53 Fed. Reg.	
sale of any property or	50106] person or the	
wages of any person unless	seizure, garnishment,	
such action is lawful and the	attachment, or sale of any	
debt collector or creditor	property or wages of any	
intends to take such action.	person"	
(5) The threat to take any	Section 807(5) prohibits	
action that cannot legally be	the "threat to take any	
taken or that is not intended	action that cannot legally	
to be taken.	be taken or that is not	
	intended to be taken."	
	intended to be taken.	

	r
1. Debt collector's	
statement of his own	
definite action. A debt	
collector may not state that	
he will take any action	
unless he intends to take	
the action when the	
statement is made, or	
ordinarily takes the action	
in similar circumstances.	
2. Debt collector's	
statement of definite action	
by third party. A debt	
collector may not state that	
a third party will take any	
action unless he has reason	
to believe, at the time the	
statement is made, that	
such action will be taken.	
3. Statement of possible	
action. A debt collector	
may not state or imply that	
he or any third party may	
take any action unless such	
action is legal and there is	
a reasonable likelihood, at	
the time the statement is	
made, that such action will	
be taken. A debt collector	
may state that certain	
action is possible, if it is	
true that such action is	
legal and is frequently	
taken by the collector or	
creditor with respect to	
similar debts; however, if	
the debt collector has	
reason to know there are	
facts that make the action	
unlikely in the particular	
case, a statement that the	
action was possible would	
be misleading.	

 4. Threat of criminal action. A debt collector may not threaten to report a dishonored check or other fact to the police, unless he actually intends to take this action. 5. Threat of attachment. A 	
debt collector may not threaten to attach a debtor's tax refund, when he has no authority to do so.	
6. Threat of legal or other action. Section 807(5) refers not only to a false threat of legal action, but also a false threat by a debt collector that he will report a debt to a credit bureau, assess a collection fee, or undertake any other action if the debt is not paid. A debt collector may also not misrepresent the imminence of such action.	
A debt collector's implication, as well as a direct statement, of planned legal action may be an unlawful deception. For example, reference to an attorney or to legal proceedings may mislead the debtor as to the likelihood or imminence of legal action.	
A debt collector's statement that legal action has been recommended is a representation that legal action may be taken, since	

	· · · ·	
	such a recommendation	l
	implies that the creditor	
	will act on it at least some	
	of the time.	
	Lack of intent may be	
	inferred when the amount	
	of the debt is so small as to	
	make the action totally	
	unfeasible or when the debt	
	collector is unable to take	
	the action because the	
	creditor has not authorized	
	him to do so.	
	7. Illegality of threatened	
	act. A debt collector may	
	not threaten that he will	
	illegally contact an	
	employer, or other third	
	party, or take some other	
	"action that cannot legally	
	be taken" (such as advising	
	the creditor to sue where	
	such advice would violate	
	state rules governing the	
	unauthorized practice of	
	law). If state law forbids a	
	debt collector from suing	
	in his own name (or from	
	doing so without first	
	obtaining a formal	
	assignment and that has not	
	been done), the debt	
	collector may not represent	
	that he will sue in that	
	state.	
(6) The false representation	Section 807(6) prohibits	
or implication that a sale,	falsely representing or	
referral, or other transfer of	implying that a transfer of	
any interest in a debt shall	the debt will cause the	
cause the debtor to –	debtor to (A) lose any	
	claim or defense, or (B)	
3. lose any claim or	become subject to any	
defense to payment	practice prohibited by the	

of the debt; or	FDCPA.	
of the debt, of	TDCIA.	
(B) become subject to any practice prohibited by this title.	1. Referral to creditor. A debt collector may not falsely state that the debtor's account will be referred back to the original creditor, who would take action the FDCPA prohibits the debt collector to take.	
(7) The false representation or implication that the debtor committed any crime or other conduct in order to disgrace the consumer.	Section 807(7) prohibits falsely representing or implying that the "consumer committed any crime or other conduct in order to disgrace the consumer."	
	1. False allegation of fraud. A debt collector may not falsely allege that the debtor has committed fraud.	
	2. Misrepresentation of criminal law. A debt collector may not make a misleading statement of law, falsely implying that the debtor has committed a crime, or mischaracterize what constitutes an offense by misstating or omitting	
	significant elements of the offense. For example, a debt collector may not tell the debtor that he has committed a crime by issuing a check that is dishonored, when the	
(8) Communicating or	statute applies only where there is a "scheme to defraud."	
(8) Communicating or threatening to communicate	Section 807(8) prohibits "Communicating or	
uncatering to communicate	Communicating of	

to any person credit	threatening to	
information which is known	communicate to any person	
or which should be known	[false] credit information	
to be false, including the	., including the failure to	
failure to communicate that	communicate that a	
a disputed debt is disputed.	disputed debt is disputed."	
	1. Disputed debt. If a debt	
	collector knows that a debt	
	is disputed by the	
	consumer, either from	
	receipt of written notice	
	(section 809) or other	
	means, and reports it to a	
	credit bureau, he must	
	report it as disputed.	
	2 Deat more set disc. (
	2. Post-report dispute.	
	When a debt collector	
	learns of a dispute after	
	reporting the debt to a	
	credit bureau, the dispute	
	need not also be reported.	
(9) The use or distribution	Section 807(9) prohibits	
of any written	the use of any document	
communication which	designed to falsely imply	
simulates or is falsely	that it issued from a state	
represented to be a	or federal source, or	
document authorized,	"which creates a false	
issued, or approved by any	impression as to its source,	
court, official, or agency of	authorization, or approval."	
the United States or any		
State, or which creates a	1. Relation to other	
false impression as to its	sections. Most of the	
source, authorization, or	violations of this section	
approval.	involve simulated legal	
	process, which is more	
	specifically covered by	
	section 807(13). However,	
	this subsection is broader	
	in that it also covers	
	documents that	
	fraudulently appear to be	
	official government	
	documents, or otherwise	
	mislead the recipient as to	
	misicau me recipient as to	1

	their authorship.	
(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.	Section 807(10) prohibits the "use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer."	If the FDCPA is the "Mother" of all consumer credit protection acts, then this section is the "Mother" of all sections of the FDCPA.
	1. Relation to other sections. The prohibition is so comprehensive that violation of any part of section 807 will usually also violate subsection (10). Actions that violate more specific provisions are discussed in those sections.	
	2. Communication format. A debt collector may not communicate by a format or envelope that misrepresents the nature, purpose, or urgency of the message. It is a violation to send any communication that conveys to the debtor a false sense of urgency. However, it is usually permissible to send a letter generated by a machine, such as a computer or other printing device. A bona fide contest entry form, which provides a clearly optional location to enter employment information, enclosed with request for payment, is not deceptive.	
	3. False statement or implications. A debt collector may not falsely state or imply that a	

	consumer is required to	
	assign his wages to his	
	creditor when he is not,	
	that the debt collector has	
	counseled the creditor to	
	sue when he has not, that	
	adverse credit information	
	has been entered on the	
	debtor's credit record when	
	it has not, that the entire	
	amount is due when it is	
	not, or that he cannot	
	accept partial payments	
	when in fact he is	
	authorized to accept them.	
	4. Misrepresentation of	
	1	
	law. A debt collector may	
	not mislead the debtor as to	
	the legal consequences of	
	the debtor's actions (e.g.,	
	by falsely implying that a	
	failure to respond is an	
	admission of liability).	
	A debt collector may not	
	state that federal law	
	requires a notice of the	
	debt collector's intent to	
	contact third parties.	
	5 Mislaadin 1.44 1 1 4	
	5. Misleading letterhead. A	
	debt collector's employee	
	who is an attorney may not	
	use "attorney-at-law" [53	
	Fed. Reg. 50107]	
	stationery without referring	
	to his employer, so as to	
	falsely imply to the debtor	
	that the debt collector had	
	retained a private attorney	
	to bring suit on the	
	account.	
(11) The failure to disclose	Section 807(11) requires	Many states require this
in the initial written	the debt collector to	"mini-Miranda" warning
communication with the	"disclose clearly in all	to be included in all
communication with the	and the crown of the un	

debtor and, in addition, if the initial communication with the debtor 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.	 communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose," except where section 804 provides otherwise. 1. Oral communications. A debt collector must make the required disclosures in both oral and written communications. 2. Disclosure to consumers. When a debt collector contacts a consumer and clearly discloses that he is seeking payment of a debt, he need not state that all information will be used to collect a debt, since that should be apparent to the consumer. The debt collector may not send the debtor a note saying only "please call me right away" unless there has been prior contact between the parties and the collector is thus known to 	communications, written and oral, initial and subsequent. Therefore, the current standard of practice is to include the statement "I am a debt collector, this is an attempt to collect a debt, and any information obtained will be used for that purpose" in the beginning of every phone call and somewhere prominently displayed in every letter to a consumer. Care must be taken, however, not to give the mini-Miranda out of habit when talking to third parties while seeking location information or leaving messages.
	between the parties and the collector is thus known to the consumer.3. Disclosures to third parties. Except when	
	seeking location information, the debt collector must state in the first communication with a	

	1 • 1 1 1 1 • 1	[]
	third party that he is	
	attempting to collect the	
	debt and that information	
	will be used for that	
	purpose, but need not do so	
	in subsequent	
	communications with that	
	party.	
(12) The false representation	Section 807(12) prohibits	
or implication that accounts	falsely representing or	
have been turned over to	implying that "accounts	
innocent purchasers for	have been turned over to	
value.		
value.	innocent purchasers for	
	value."	
	1. Relation to other	
	sections. Section 807(6)(A)	
	prohibits a false statement	
	or implication that	
	threatening to affect the	
	debtor's rights may be	
	affected by transferring the	
	account; this subsection	
	forbids falsely stating or	
	implying that a transfer to	
	certain parties has	
	occurred.	
(13) The false representation	Section 807(13) prohibits	
or implication that	falsely representing or	
-	implying that "documents	
documents are legal process.		
	are legal process."	
	1. Simulated legal process.	
	A debt collector may not	
	send written	
	communications that	
	deceptively resemble legal	
	process forms. He may not	
	-	
	send a form or a dunning	
	letter that, taken as a	
	whole, appears to simulate	
	legal process. However,	
	one legal phrase (such as	
	"notice of legal action" or	
	"show just cause why")	
	alone will not result in a	

	violation of this section	
	unless it contributes to an	
	erroneous impression that	
	the document is a legal	
	form.	
(14) The use of any	Section 807(14) prohibits	
business, company, or	the "use of any business,	
organization name other	company, or organization	
than the true name of the	name other than the	
debt collector's business,	[collector's] true name."	
company, or organization.		
company, or organization	1. Permissible business	
	name. A debt collector may	
	use a name that does not	
	misrepresent his identity or deceive the consumer.	
	Thus, a collector may use	
	its full business name, the	
	name under which it	
	usually transacts business,	
	or a commonly-used	
	acronym. When the	
	collector uses multiple	
	names in its various affairs,	
	it does not violate this	
	subsection if it consistently	
	uses the same name when	
	dealing with a particular	
	consumer.	
	2. Creditor	
	misrepresentation of	
	identity. A creditor may	
	not use any name that	
	would falsely imply that a	
	third party is involved in	
	the collection. The in-	
	house collection unit of	
	"ABC Corp." may use the	
	name "ABC Collection	
	Division," but not the name	
	"XYZ Collection Agency"	
	or some other unrelated	
	name.	
	A creditor violates this	

section if he uses the name of a collection bureau as a conduit for a collection process that the creditor controls in collecting his own accounts. Similarly, a creditor may not use a fictitious name or letterhead, or a "post office box address" name that implies someone else is collecting his debts.	
A creditor does not violate this provision where an affiliated (and differently named) debt collector undertakes collection activity, if the debt collector does business separately from the creditor (e.g., where the debt collector in fact has other clients that he treats similarly to the creditor, has his own employees, deals at arms length with the creditor, and controls the process himself).	
3. All collection activities covered. A debt collection business must use its real business name, commonly- used name, or acronym in both written and oral communications.	
4. Relation to other sections. If a creditor uses a false business name, he both loses his exemption from the FDCPA's definition of "debt collector" (section 803(6)) and violates this provision.	

	If a debt collector falsely	
	uses the name of an	
	attorney rather than his true	
	business name, he violates	
	section 807(3) as well as	
	this section. When a debt	
	collector uses a false	
	business name in a phone	
	call, he violates section	
	806(6) as well as this	
	section.	
	Section.	
	When using the mails to	
	obtain location	
	information, a debt	
	collector may not (unless	
	expressly requested by the	
	recipient to identify the	
	firm) use a name that	
	indicates he is in the debt	
	collection business, or he	
	will violate section 804(5).	
	When a debt collector's	
	employee who is seeking	
	location information	
	replies to an inquiry about	
	his employer's identity	
	under section 804(1), he	
	must give the true name of	
	his employer.	
(15) The false representation	Section 807(15) prohibits	
or implication that	falsely representing or	
documents are not legal	implying that documents	
process forms or do not	are not legal process forms	
require action by the	or do not require action by	
consumer.	the consumer.	
	1. Disguised legal process.	
	A debt collector may not	
	deceive a consumer into	
	failing to respond to legal	
	process by concealing the	
	import of the papers,	
	thereby subjecting the	
	debtor to a default	
	judgment.	
	Judgmont.	

(16) 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.	Section 807(16) prohibits falsely representing or implying that a debt collector operates or is employed by a "consumer reporting agency" as defined in the Fair Credit Reporting Act.	
	1. Dual agencies. The FDCPA does not prohibit a debt collector from operating a consumer reporting agency.	
	2. Misleading names. Only a bona fide consumer reporting agency may use names such as "Credit Bureau," "Credit Bureau Collection Agency," "General Credit Control," "Credit Bureau Rating, Inc.," or "National Debtors Rating." A debt collector's disclaimer in the text of a letter that the debt collector is not affiliated with (or employed by) a consumer reporting agency will not necessarily avoid a violation if the collector uses a name that indicates otherwise.	
	3. Factual issue. Whether a debt collector that has called itself a credit bureau actually qualifies as such is a factual issue, to be decided according to the debt collector's actual operation.	

§ 808. Unfair practices [15 USC 1692f]

 What the FDCPA says
 What the FTC says the FDCPA says
 What the FDCPA means practically

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:	Section 808 prohibits a debt collector from using "unfair or unconscionable means" in his debt collection activity. It provides eight examples of unfair practices.	Like Section 806's harassment, abuse, and oppression and Section 807's false and misleading representations, Section 808's definition of unfair practices is very broad.
	 Scope. Prohibited actions are not limited to the eight subsections listed as examples of activities that violate this provision. Elements of unfairness. 	Section 808's unfair practice prohibition is the big trawler's net designed to catch all kinds of unwary debt collector fish
	A debt collector's act in collecting a debt may be "unfair" if it causes injury	doing even colorably fair things. It it seems unfair at all,
	to the debtor that is (1) substantial, (2) not outweighed by countervailing benefits to consumers or competition,	then don't do it. It's too easy to collect debt fairly and it's too easy to get sued unfairly.
	and (3) not reasonably avoidable by the consumer.	The examples speak for themselves.
(1) 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	Section 808(1) prohibits collecting any amount unless the amount is expressly authorized by the agreement creating the debt or is permitted by law.	
creating the debt or permitted by law.	1. Kinds of amounts covered. For purposes of this section, "amount" includes not only the debt, but also any incidental charges, such as collection [53 Fed. Reg. 50108] charges, interest, service	
	charges, late fees, and bad check handling charges.2. Legality of charges. A	
	debt collector may attempt to collect a fee or charge in	

		1
	addition to the debt if	
	either (a) the charge is	
	expressly provided for in	
	the contract creating the	
	debt and the charge is not	
	prohibited by state law, or	
	(b) the contract is silent but	
	the charge is otherwise	
	e	
	expressly permitted by	
	state law. Conversely, a	
	debt collector may not	
	collect an additional	
	amount if either (a) state	
	law expressly prohibits	
	collection of the amount or	
	(b) the contract does not	
	provide for collection of	
	the amount and state law is	
	silent.	
	Shellt.	
	2 Legality of factors day	
	3. Legality of fee under	
	state law. If state law	
	permits collection of	
	reasonable fees, the	
	reasonableness (and	
	consequential legality) of	
	these fees is determined by	
	state law.	
	4. Agreement not in	
	writing. A debt collector	
	may establish an	
	5	
	"agreement" without a	
	written contract. For	
	example, he may collect a	
	service charge on a	
	dishonored check based on	
	a posted sign on the	
	merchant's premises	
	allowing such a charge, if	
	he can demonstrate that the	
	debtor knew of the charge.	
(2) The accentance by a dabt		Some have argued that
(2) The acceptance by a debt	Section 808(2) prohibits	Some have argued that
collector from any person of	accepting a check	electronic payments are
a check or other payment	postdated by more than	not included in this
instrument postdated by	five days unless timely	requirement, especially

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.	written notice is given to the debtor prior to deposit.	electronic credit card payments. If a debtor is using a debit card instead of a credit card, it would be. Not being able to easily tell the difference, the safest recommendation is to comply with the Notice of Intent to Deposit requirements for all postdated transactions.
(3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.	Section 808(3) prohibits soliciting any postdated check for purposes of threatening or instituting criminal prosecution.	
 (4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument. 	Section 808(4) prohibits depositing a postdated check prior to its date. 1. Postdated checks. These provisions do not totally prohibit debt collectors from accepting postdated checks from consumers, but rather prohibit debt collectors from misusing such instruments.	
(5) Causing charges to be made to any person for communications by concealment of the true propose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.	Section 808(5) prohibits causing any person to incur telephone or telegram charges by concealing the true purpose of the communication. 1. Long distance calls to the debt collector. A debt collector may not call the debtor collect or ask a consumer to call him long distance without disclosing the debt collector's identity and the communication's	

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	purpose.	
	2. Relation to other section.	
	A debt collector who	
	conceals his purpose in	
	asking consumers to call	
	long distance may also	
	violate section 807(11),	
	which requires the debt	
	collector to disclose his	
	purpose in some	
	communications.	
(6) Taking or threatening to	Section 808(6) prohibits	
take any nonjudicial action	taking nonjudicial action to	
to effect dispossession or	enforce a security interest	
disablement of property if –	on property, or threatening	
r r J	to do so, where (A) there is	
(A) there is no present right	not present right to the	
to possession of the property	collateral, (B) there is no	
claimed as collateral	present intent to exercise	
through an enforceable	such rights, or (C) the	
security interest;	property is exempt by law.	
(B) there is no present		
intention to take possession	1. Security enforcers.	
of the property; or	Because the FDCPA's	
(C) the property is exempt	definition of "debt	
by law from such	collection" includes parties	
dispossession or	whose principal business is	
disablement.	enforcing security interests	
disablement.	only for section 808(6)	
	purposes, such parties (if	
	they do not otherwise fall	
	within the definition) are	
	subject only to this	
	provision and not to the	
	rest of the FDCPA.	
(7) Communicating with a	Section 808(7) prohibits	
consumer regarding a debt	"Communicating with a	
by post card.	consumer regarding a debt	
	by post card."	
	1. Debt. A debt collector	
	does not violate this	
	section if he sends a post	
	card to a consumer that	
	does not communicate the	

(8) 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.	 existence of the debt. However, if he had not previously disclosed that he is attempting to collect a debt, he would violate section 807(11), which requires this disclosure. Section 808(8) prohibits showing anything other than the debt collector's address, on any envelope in any written communication to the consumer, except that a debt collector may use his business name if it does not indicate that he is in the debt collection business. 1. Business names prohibited on envelopes. A debt collector may not put on his envelope any business name with "debt" or "collector" in it, or any other name that indicates he is in the debt collection business. A debt collector may not use the American Collectors Association logo on an envelope. 2. Collector's name. Whether a debt collector/consumer reporting agency's use of his own "credit bureau" or other name indicates that he is in the collection business, and thus violates the section, is a factual issue to be determined in 	
	issue to be determined in	
	each individual case. 3. Harmless words or	
	symbols. A debt collector	

does not violate this	
section by using an	
envelope printed with	
words or notations that do	
not suggest the purpose of	
the communication. For	
example, a collector may	
communicate via an actual	
telegram or similar service	
that uses a Western Union	
(or other provider) logo	
and the word "telegram"	
(or similar word) on the	
envelope, or a letter with	
the word "Personal" or	
"Confidential" on the	
envelope.	
-	
4. Transparent envelopes.	
A debt collector may not	
use a transparent envelope,	
which reveals language or	
symbols indicating his debt	
collection business,	
because it is the equivalent	
of putting information on	
an envelope.	
	1

What the FDCPA says Within five days after the	What the FTC says the FDCPA says	What the FDCPA means practically
initial communication with a	Section 809(a) requires a collector, within 5 days of	The question is often asked, "How should oral
consumer in connection	the first communication, to	
		disputes be handled?"
with the collection of any	provide the debtor a	
debt, a debt collector shall,	written notice (if not	Oral disputes trigger the
unless the following	provided in that	data furnisher's
information is contained in	communication) containing	requirements under
the initial communication or	(1) the amount of the debt	FCRA, FACTA, and the
the debtor has paid the debt,	and (2) the name of the	Brady decision to add the
send the debtor a written	creditor, along with a	dispute to the tradeline at
notice containing –	statement that he will (3)	a consumer reporting
	assume the debt's validity	agency.
(1) the amount of the debt;	unless the debtor disputes	
	it within 30 days, (4) send	Oral disputes do not
(2) the name of the creditor	a verification or copy of	trigger 809(b)
to whom the debt is owed;	the judgment if the debtor	requirements to stop
	timely disputes the debt,	collection activity until
(3) a statement that unless	and (5) identify the original	the debt collector mails
the consumer, within thirty	creditor upon written	verification of the debt or
days after receipt of the	request.	original creditor's name
notice, disputes the validity	-	and address. Nonetheless,
of the debt, or any portion	1. Who must provide	a debt collector is not
thereof, the debt will be	notice. If the employer debt	likely to get much further
assumed to be valid by the	collection agency gives the	without doing so.
debt collector;	required notice, employee	Therefore, the current
·····,	debt collectors need not	standard of practice is to
(4) a statement that if the	also provide it. A debt	respond to even oral
debtor notifies the debt	collector's agent may give	disputes as though they
collector in writing within	the notice, as long as it is	were written.
the thirty-day period that the	clear that the information is	
debt, or any portion thereof,	being provided on behalf	
is disputed, the debt	of the debt collector.	
collector will obtain		
verification of the debt or a	2. Single notice required.	
copy of a judgment against	The debt collector is not	
the debtor and a copy of	required to provide more	
such verification or	than one notice for each	
judgment will be mailed to	debt. A notice need not	
the debtor by the debt	offer to identify the	
collector; and	original creditor unless the	
	name and address of the	
(5) a statement that when	original creditor are	
(5) a statement that, upon	different from the current	
the debtor's written request	creditor.	
within the thirty-day period,		

§ 809. Validation of debts [15 USC 1692g]

the debt collector will provide the debtor with the name and address of the original creditor, if different from the current creditor.	3. Form of notices. The FDCPA imposes no requirements as to the form, sequence, location, or typesize of the notice. However, an illegible notice does not comply with this provision.	
	4. Alternate terminology. A debt collector may condense and combine the required disclosures, as long as he provides all required information.	
	5. Oral notice. If a debt collector's first communication with the debtor is oral, he may make the disclosures orally at that time in which case he need not send a written notice.	
	6. Legal action. A debt collector's institution of formal legal action against a consumer (including the filing of a complaint or service of legal papers by an attorney in connection with a lawsuit to collect a debt) or transmission of a notice to a consumer that is required by law as a prerequisite to enforcing a contractual obligation is not a "communication in connection with collection of any debt," and thus does not confer section 809 notice-and-validation rights on the consumer.	Courts have often disregarded the FTC's position that filing a complaint is not a communication concerning a debt.
	7. Collection activities by	

	attorneys. An attorney who	
	regularly attempts to	
	collect debts by means	
	other than litigation, such	
	as writing the debtor	
	demand letters (dunning	
	notices) or calling the	
	debtor on the phone about	
	the obligation (except in	
	response to a debtor's call	
	to him after suit has been	
	commenced), must provide	
	the required notice, even if	
	_	
	a previous debt collector	
	(or creditor) has given such	
	a notice.	
	8. Effect of including proof	
	with first notice. A debt	
	collector must verify a	
	disputed debt even if he	
	has included proof of the	
	debt with the first	
	communication, because	
	the section is intended to	
	assist the debtor when a	
	debt collector inadvertently	
	contacts the wrong	
	consumer at the start of his	
	collection efforts.	
(b) If the debtor notifies the	Section 809(b) requires	
debt collector in writing	that, if the debtor disputes	
within the thirty-day period	the debt or requests	
described in subsection (a)	identification of the	
that the debt, or any portion	original creditor in writing,	
thereof, is disputed, or that	the collector must cease	
the debtor requests the name	collection efforts until he	
and address of the original	verifies the debt and mails	
creditor, the debt collector	a response.	
shall cease collection of the		
debt, or any disputed portion	Pre-notice collection. A	
thereof, until the debt	debt collector need not	
collector obtains verification	cease normal collection	
of the debt or any copy of a	activities within the	
judgment, or the name and	debtor's 30-day period to	
address of the original	give notice of a dispute	

creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the debtor by the debt collector.	until he receives a notice from the consumer. An attorney debt collector may take legal action within 30 days of sending the notice, regardless of whether the debtor disputes the debt. If the debtor disputes the debt, the attorney may still take legal action but must cease collection efforts until verification is obtained and mailed to the consumer. A debt collector may report a debt to a credit bureau	
	within the 30-day notice period, before he receives a request for validation or a dispute notice from the consumer.	
(c) 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.	Section 809(c) states that a debtor's failure to dispute the validity of a debt under this section may not be interpreted by a court as an admission of liability.	

What theFDCPA says	What the FTC says the FDCPA says	What the FDCPA means practically
If any consumer owes	Section 810 provides: "If	
multiple debts and makes	any consumer owes	
any single payment to any	multiple debts and makes	
debt collector with respect	any single payment to any	
to such debts, such debt	debt collector with respect	
collector may not apply	to such debts, such debt	
such payment to any debt	collector may not apply	
which is disputed by the	such payment to any debt	
debtor and, where	which is disputed by the	
applicable, shall apply such	debtor and, where	
payment in accordance with	applicable, shall apply such	
the debtor's directions.	payment in accordance	
	with the debtor's	
	directions."	

§ 810. Multiple debts [15 USC 1692h]

What theFDCPA says(a) Any debt collector who	What the FTC says the FDCPA says Section 811 provides that a	What the FDCPA means practically The limitations on where
brings any legal action on a	debt collector may sue a	a consumer may be sued
debt against any consumer	consumer only in the	make it expensive for
shall	judicial district where the	creditors to collect on
	debtor resides or signed the	small balance accounts.
(1) in the case of an action	contract sued upon, except	
to enforce an interest in real	that an action to enforce a	This limits the ability of a
property securing the	security interest in real	debt collector to use the
debtor's obligation, bring	property which secures the	threat of a lawsuit as a
such action only in a judicial	obligation must be brought	hammer during the
district or similar legal	where the property is	negotiations.
entity in which such real	located.	6
property is located; or		
r r s s s s s s s s s s s s s s s s s s	1. Waiver. Any waiver by	
(2) in the case of an action	the debtor must be	
not described in paragraph	provided directly to the	
(1), bring such action only	debt collector (not to the	
in the judicial district or	creditor in the contract	
similar legal entity	establishing the debt),	
	because the forum	
(A) in which such consumer	restriction applies to	
signed the contract sued	actions brought by the debt	
upon; or	collector.	
(B) in which such consumer	2. Multiple defendants.	
resides at the	Since a debt collector may	
commencement of the	sue only where the debtor	
action.	(1) lives or (2) signed the	
	contract, the collector may	
	not join an ex-husband as a	
	defendant to a suit against	
	the ex-wife in the district	
	of her residence, unless he	
	also lives there or signed	
	the contract there. The	
	existence of community	
	property at her residence	
	that is available to pay his	
	debts does not alter the	
	forum limitations on	
	individual consumers.	
	3 Real estate convitu A	
	3. Real estate security. A debt collector may sue	
	debt conector may sue	

§ 811. Legal actions by debt collectors [15 USC 1692i]

	based on the location of a	
	debtor's real property only	
	when he seeks to enforce	
	an interest in such property	
	that secures the debts.	
	4. Services without written	
	contract. Where services	
	were provided pursuant to	
	an oral agreement, the debt	
	collector may sue only	
	where the debtor resides.	
	He may not sue where	
	services were performed (if	
	that is different from the	
	debtor's residence),	
	because that is not included	
	as permissible forum	
	location by this provision.	
	5. Enforcement of	
	judgments. If a judgment is	
	obtained in a forum that	
	satisfies the requirements	
	of this section, it may be	
	enforced in another	
	jurisdiction, because the	
	debtor previously has had	
	the opportunity to defend	
	the original action in a	
	convenient forum.	
	6. Scope. This provision	
	applies to lawsuits brought	
	by a debt collector,	
	including an attorney debt	
	collector, when the debt	
	collector is acting on his	
	own behalf or on behalf of	
	his client.	
(b) Nothing in this title		-
shall be construed to		
authorize the bringing of		
legal actions by debt		

collectors.

	• •	
What the FDCPA says	What the FTC says the FDCPA says	What the FDCPA means practically
(a) It is unlawful to design,	Section 812 prohibits any	This is the one thing that a
compile, and furnish any	party from designing and	creditor cannot do under
form knowing that such	furnishing forms, knowing	the FDCPA. Neither can
form would be used to	they are or will be used to	anyone else.
create the false belief in a	deceive a consumer to	
consumer that a person	believe that someone other	
other than the creditor of	than his creditor is	
such consumer is	collecting the debt, and	
participating in the	imposes FDCPA civil	
collection of or in an	liability on parties who	
attempt to collect a debt	supply such forms.	
such consumer allegedly		
owes such creditor, when in	1. Practice prohibited. This	
fact such person is not so	section prohibits the	
participating.	practice of selling to	
	creditors dunning letters	
	that falsely imply that a	
	debt collector is	
	participating in collection	
	of the debt, when in fact	
	only the creditor is	
	collecting.	
	2. Coverage. This section	
	applies to anyone who	
	designs, compiles, or	
	furnishes the forms	
	prohibited by this section.	
	promoted by this section.	
	3. Pre-collection letters. A	
	form seller may not furnish	
	a creditor with (1) a letter	
	on a collector's letterhead	
	to be used when the	
	collector is not involved in	
	collecting the creditor's debta or (2) a letter	
	debts, or (2) a letter	
	indicating "copy to (the	
	collector)" if the collector	
	is not participating in	
	collecting the creditor's	
	debt. A form seller may not	
	avoid liability by including	
	a statement in the text of a	

§ 812. Furnishing certain deceptive forms [15 USC 1692j]

	form letter that the sender	
	has not yet been assigned	
	the account for collection,	
	if the communication as a	
	whole, using the collector's	
	letterhead, represents	
	otherwise.	
	4. Knowledge required. A	
	party does not violate this	
	provision unless he knows	
	or should have known that	
	his form letter will be used	
	to mislead consumers into	
	believing that someone	
	other than the creditor is	
	involved in collecting the	
	debt.	
	5. Participation by debt	
	collector. A debt collector	
	that uses letters as his only	
	collection tool does not	
	violate this section, merely	
	because he charges a flat	
	rate per letter, if he is	
	meaningfully "participating	
	in the collection of a debt."	
	The debtor is not misled in	
	such cases, as he would be	
	in the case of a party who	
	supplied the creditor with	
	form letters and provided	
	little or no additional	
	service in the collection	
	process. The performance	
	of other tasks associated	
	with collection (e.g.,	
	handling verification	
	requests, negotiating	
	payment arrangements,	
	keeping individual records)	
	is evidence that such a	
	party is "participating in	
	the collection."	
(b) Any person who violates		
(0) 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.	

What the FDCPA says What the FTC says the FDCPA says What the FDCPA means practically (a) Except as otherwise Section 813 (A) imposes It used to be that almost provided by this section, any civil liability in the form of any violation of the debt collector who fails to (1) actual damages, (2)FDCPA would trigger a comply with any provision discretionary penalties, and court allowing at least a of this title with respect to (3) costs and attorney's \$1,000 damage award, any person is liable to such fees; (B) discusses relevant plus court costs. Courts person in an amount equal are getting fed up, factors a court should to the sum of -consider in assessing however, with specious damages; (C) exculpates a FDCPA claims clogging collector who maintains their dockets and they (1) any actual damage sustained by such person as have begun being more reasonable procedures a result of such failure; selective of when they from liability for an unintentional error; (D) will allow damages to the permits actions to be plaintiff, even if they (2) (A) in the case of any brought in federal or state allow some recovery of action by an individual, such additional damages as the courts within one year attorneys' fees. court may allow, but not from the violation: and (E) exceeding \$1,000; or shields a defendant who The limitation of damages relies on an advisory in class actions to the opinion of the lesser of \$500,000 or 1% (B) in the case of a class Commission. of the value of the action, (i) such amount for each named plaintiff as company is the reason could be recovered under that no reasonable debt 1. Employee liability. Since the employees of a subparagraph (A), and (ii) collection company such amount as the court debt collection agency are maintains any net worth "debt collectors," they are may allow for all other class to speak of. Most debt liable for violations to the collection companies members, without regard to attempt to keep their a minimum individual same extent as the agency. balance sheet net worth recovery, not to exceed the under \$100,000 so that lesser of \$500,000 or 1 per 2. Damages. The courts centum of the net worth of have awarded "actual successful class action the debt collector; and damages" for FDCPA plaintiffs are not rewarded violations that were not with statutory damages. (3) in the case of any just out-of-pocket successful action to enforce expenses, but included damages for personal the foregoing liability, the costs of the action, together humiliation, with a reasonable attorney's embarrassment, mental fee as determined by the anguish, or emotional court. On a finding by the distress. court that an action under this section was brought in 3. Application of statute of limitation period. The bad faith and for the purpose of harassment, the court section's one-year statute of

§ 813. Civil liability [15 USC 1692k]

may award to the defendant attorney's fees reasonable in relation to the work expended and costs.	limitations applies only to private lawsuits, not to actions brought by a government agency.	
 (b) In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors (1) 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 	4. Advisory opinions. A party may act in reliance on a formal advisory opinion of the Commission pursuant to 16 CFR 1.1- 1.4, without risk of civil liability. This protection does not extend to reliance on this Commentary or other informal staff interpretations.	
(2) 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.		
(c) 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.	
(d) 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.	
(e) 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.	

	-	
What the FDCPA says	What the FTC says the FDCPA says	What the FDCPA means practically
(a) Compliance with this	Section 814 provides that	
title shall be enforced by	the principal federal	
the Commission, except to	enforcement agency for	
the extent that enforcement	the FDCPA is the Federal	
of the requirements	Trade Commission, but	
imposed under this title is	assigns enforcement	
specifically committed to	power to other authorities	
another agency under	empowered by certain	
subsection (b). For purpose	federal statutes to regulate	
of the exercise by the	financial, agricultural, and	
Commission of its functions	transportation activities,	
and powers under the	where FDCPA violations	
Federal Trade Commission	relate to acts subject to	
Act, a violation of this title	those laws.	
shall be deemed an unfair		
or deceptive act or practice		
in violation of that Act. All		
of the functions and powers		
of the Commission under		
the Federal Trade		
Commission Act are		
available to the		
Commission to enforce		
compliance by any person		
with this title, irrespective		
of whether that person is		
engaged in commerce or		
meets any other		
jurisdictional tests in the		
Federal Trade Commission		
Act, including the power to		
enforce the provisions of		
this title in the same manner		
as if the violation had been		
a violation of a Federal		
Trade Commission trade		
regulation rule.		
(h) Compliance with sur-		
(b) Compliance with any		
requirements imposed		
under this title shall be		
enforced under –		
(1) section 8 of the Federal		

§ 814. Administrative enforcement [15 USC 1692I]

Deposit Insurance Act, in the case of –	
(A) national banks, by the Comptroller of the Currency;	
(B) member banks of the Federal Reserve System(other than national banks),by the Federal ReserveBoard; and	
(C) banks the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;	
(2) section 5(d) of the Home Owners Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directing or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;	
(3) the Federal CreditUnion Act, by theAdministrator of theNational Credit UnionAdministration with respectto any Federal credit union;	

(4) subtitle IV of Title 49, by the Interstate Commerce Commission with respect to any common carrier subject to such subtitle;	
(5) the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that Act; and	
(6) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.	
(c) For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition	
to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any	
requirement imposed under this title any other authority conferred on it by law, except as provided in	

subsection (d).	
(d) Neither the Commission nor any other agency referred to in subsection (b) may promulgate trade regulation rules or other	
regulations with respect to the collection of debts by	
debt collectors as defined in	
this title.	

What theFDCPA says	What the FTC says the FDCPA says	What the FDCPA means practically
(a) Not later than one year	Section 815 requires the	
after the effective date of	Commission to submit an	
this title and at one-year	annual report to Congress	
intervals thereafter, the	which discusses its	
Commission shall make	enforcement and other	
reports to the Congress	activities administering the	
concerning the	FDCPA, assesses the	
administration of its	degree of compliance, and	
functions under this title,	makes recommendations.	
including such		
recommendations as the		
Commission deems		
necessary or appropriate. In		
addition, each report of the		
Commission shall include		
its assessment of the extent		
to which compliance with		
this title is being achieved		
and a summary of the		
enforcement actions taken		
by the Commission under		
section 814 of this title.		
(b) In the exercise of its		
functions under this title, the		
Commission may obtain		
upon request the views of		
any other Federal agency		
which exercises		
enforcement functions under		
section 814 of this title.		

§ 815. Reports to Congress by the Commission [15 USC 1692m

What theFDCPA says	What the FTC says the FDCPA says	What the FDCPA means practically
This title does not annul,	Section 816 provides that	The FDCPA did not
alter, or affect, or exempt	the FDCPA pre-empts state	"preempt the field" of
any person subject to the	laws only to the extent that	collections regulation in
provisions of this title from	those laws are inconsistent	the United States.
complying with the laws of	with any provision of the	Therefore, each and every
any State with respect to	FDCPA, and then only to	state can (and about thirty
debt collection practices,	the extent of the	of them do) regulate and
except to the extent that	inconsistency. A state law	license debt collectors.
those laws are inconsistent	is not inconsistent if it	
with any provision of this	gives consumers greater	
title, and then only to the	protection than the	
extent of the inconsistency.	FDCPA.	
For purposes of this section,		
a State law is not	1. Inconsistent laws. Where	
inconsistent with this title if	a state law provides	
the protection such law	protection to the debtor	
affords any consumer is	equal to, or greater than,	
greater than the protection	the FDCPA, it is not pre-	
provided by this title.	empted by the federal	
	statute.	

§ 816. Relation to State laws [15 USC 1692n

What theFDCPA says	What the FTC says the FDCPA says	What the FDCPA means practically
The Commission shall by	Section 817 orders the	
regulation exempt from the	Commission to exempt any	
requirements of this title any	class of debt collection	
class of debt collection	practices from the FDCPA	
practices within any State if	within any state if it	
the Commission determines	determines that state laws	
that under the law of that	regulating those practices	
State that class of debt	are substantially similar to	
collection practices is	the FDCPA, and contain	
subject to requirements	adequate provision for	
substantially similar to those	enforcement.	
imposed by this title, and		
that there is adequate	1. State exemptions. A	
provision for enforcement.	state with a debt collection	
	law may apply to the	
	Commission for an	
	exemption. The	
	Commission must grant the	
	exemption if the state's law	
	is substantially similar to	
	the FDCPA, and there is	
	adequate provision for	
	enforcement. The	
	Commission has published	
	procedures for processing	
	such applications (16 CFR	
	901).	

§ 817. Exemption for State regulation [15 USC 16920]

What theFDCPA says	What the FTC says the FDCPA says	What the FDCPA means practically
This title takes effect upon	Section 818 provides that	This is an old statute that
the expiration of six months	the FDCPA took effect six	has not been updated to
after the date of its	months from the date of its	account for many
enactment, but section 809	enactment.	advances in technology
shall apply only with respect		such as interactive voice
to debts for which the initial	1. Key dates. The FDCPA	response (IVR) telephony,
attempt to collect occurs	was approved September	e-mail, or the Internet.
after such effective date.	20, 1977, and became	
	effective March 20, 1978.	
Approved September 20,		
1977		
ENDNOTES		
1. So in original; however,		
should read "604(a)(3)."		

§ 818. Effective date [15 USC 1692 note]