

THE FEDERAL CREDIT AND COLLECTION LAW HANDBOOK

Legal Disclaimer: This Handbook is not intended to provide legal advice or substitute for advice provided by a lawyer. Users should not act or rely solely on the general information contained in this Handbook without obtaining specific legal advice from Fineman Krekstein & Harris, P.C. attorneys.

INTRODUCTION

The law firm of Fineman Krekstein & Harris has been in the forefront of representing creditors, law firms and agencies for violations of federal and state consumer protection laws including the Fair Debt Collection Practices Act, the Fair Credit Reporting Act and the Truth in Lending Act for the past ten years. We also have defended against claims that the defendants violated state debt collection statutes, defamed the plaintiffs and violated plaintiffs' right to privacy.

We have handled matters throughout the United States in state courts, federal courts and before states' attorneys general as well as in front of administrative agencies. While most cases are brought by individual plaintiffs against individual defendants, we have extensive experience litigating the most complex class actions from inception to settlement, or even trial where required. Our experience gives us an edge in advising and counseling clients on compliance, because the most effective litigation tool is to never be sued in the first place.

Our partner in charge of our Creditors' Rights practice group is an active member of the Members Attorney Program (MAP) of the Association of Credit and Collection Professionals (ACA International). He also served as the MAP State Compliance Chair for

Pennsylvania from 2005 – 2007. He has been recognized among his peers as a New Jersey “Super Lawyer” from 2006 to the present for his expertise in business litigation. He has also received the coveted distinction of being named a 2008 “Lawyer on the Fast Track” by The Legal Intelligencer and the Pennsylvania Law Weekly. This prestigious award is bestowed upon a select number of Pennsylvania lawyers who have shown outstanding promise in the legal profession and who have made a significant commitment to the community-at-large.

This Handbook is designed to provide you with a general look at the pertinent federal laws pertaining to collection activity and data furnishing to consumer reporting agencies. The Frequently Asked Questions are intended to serve as a “first stop” for some of the most common questions facing creditors engaged in collection and credit activity. However, this Handbook is not intended to provide specific legal advice or substitute for advice provided by a lawyer. Readers should not act or rely solely on the general information contained in this Handbook without obtaining specific legal advice from an attorney.

Fineman Krekstein & Harris is *Dedicated to the Practice of Relationships*. We hope you find this Handbook a valuable tool for your collection practice.

TABLE OF CONTENTS

The Fair Debt Collection Practices Act

Selected Sections, 15 U.S.C. § 1692, et seq.

§ 1692.	<i>Congressional findings and declaration of purpose</i>
§ 1692a.	<i>Definition</i>
§ 1692b.	<i>Acquisition of location information</i>
§ 1692c.	<i>Communication in connection with debt collection</i>
§ 1692d.	<i>Harassment or abuse</i>
§ 1692e.	<i>False or misleading representations</i>
§ 1692f.	<i>Unfair practices</i>
§ 1692g.	<i>Validation of debts</i>
§ 1692h.	<i>Multiple debts</i>
§ 1692i.	<i>Legal actions by debt collectors</i>
§ 1692j.	<i>Furnishing certain deceptive forms</i>
§ 1692k.	<i>Civil liability</i>
§ 1692n.	<i>Relation to State laws</i>

Frequently Asked Questions

TABLE OF CONTENTS

The Fair Credit Reporting Act

Selected Sections, 15 U.S.C. § 1681, et seq.

§ 1681a. *Definitions; rules of construction*

§ 1681b. *Permissible purposes of
consumer reports*

§ 1681n. *Civil liability for willful
noncompliance*

§ 1681o. *Civil liability for negligent
noncompliance*

§ 1681p. *Jurisdiction of courts;
limitation of actions*

§ 1681s-2. *Responsibilities of furnishers of
information to consumer reporting
agencies*

Frequently Asked Questions

FAIR DEBT COLLECTION PRACTICES ACT – SELECTED SECTIONS

§ 1692. Congressional findings and declaration of purpose

(a) Abusive practices. There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Inadequacy of laws. Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Available non-abusive collection methods. Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Interstate commerce. 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) Purposes. It is the purpose of this title [15 USCS §§ 1692 et seq.] to eliminate abusive debt collection practices by debt collectors, to insure that those debt

collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

§ 1692a. Definitions

As used in this title [15 USCS §§ 1692 et seq.]—

(1) The term "Commission" means the Federal Trade Commission.

(2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term 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.

(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.

(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 attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. 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) [15 USCS § 1692f(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—

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the

principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

§ 1692b. Acquisition of location information

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(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 that such person now has correct or complete location information;

(4) not communicate by post card;

(5) 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

(6) 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 communication from the debt collector.

§ 1692c. Communication in connection with debt collection

(a) Communication with the consumer generally. Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock

antemeridian and before 9 o'clock postmeridian, local time at the consumer's location;

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the 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

(3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) Communication with third parties. Except as provided in section 804 [15 USCS § 1692b], without the prior consent of the consumer 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 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.

(c) Ceasing communication. If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt

collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—

(1) to advise the consumer that the debt collector's further efforts are being terminated;

(2) to notify the consumer 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 consumer that the debt collector or creditor intends to invoke a specified remedy. If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) "Consumer" defined. For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

§ 1692d. Harassment or abuse

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the

foregoing, the following conduct is a violation of this section:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 603(f) or 604(3) of this Act [15 USCS §§ 1681a(f) or 1681b(3)].

(4) The advertisement for sale of any debt to coerce payment of the 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.

(6) Except as provided in section 804 [15 USCS § 1692b], the placement of telephone calls without meaningful disclosure of the caller's identity.

§ 1692e. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of—

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this title [15 USCS §§ 1692 et seq.].

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(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.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer 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.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(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 [15 USCS § 1681a(f)].

§ 1692f. Unfair practices

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:

(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 creating the debt or permitted by law.

(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by 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.

(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.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

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

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

(7) Communicating with a consumer regarding a debt by post card.

(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.

§ 1692g. Validation of debts

(a) Notice of debt; contents. Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer

has paid the debt, send the consumer a written notice containing—

(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 after 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 consumer 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 consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

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

(b) Disputed debts. If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any

disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this title may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

(c) Admission of liability. 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.

(d) Legal pleadings. A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).

(e) Notice provisions. The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by the

Internal Revenue Code of 1986 [26 USCS §§ 1 et seq.], title V of Gramm-Leach-Bliley Act [15 USCS §§ 6801 et seq.], or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

§ 1692h. Multiple debts

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

§ 1692i. Legal actions by debt collectors

(a) Venue. Any debt collector who brings any legal action on a debt against any consumer shall—

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity—

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

(b) Authorization of actions. Nothing in this title [15 USCS §§ 1692 et seq.] shall be construed to authorize the bringing of legal actions by debt collectors.

§ 1692j. Furnishing certain deceptive forms

(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

(b) 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 [15 USCS § 1692k] for failure to comply with a provision of this title [15 USCS §§ 1692 et seq.].

§ 1692k. Civil liability

(a) Amount of damages. Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this title [15 USCS §§ 1692 et seq.] with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of such failure;

(2) (A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding \$1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) Factors considered by court. 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

(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) Intent. A debt collector may not be held liable in any action brought under this title [15 USCS §§ 1692 et seq.] 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) Jurisdiction. An action to enforce any liability created by this title [15 USCS §§ 1692 et seq.] 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) Advisory opinions of Commission. 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.

§ 1692n. Relation to State laws

This title [15 USCS §§ 1692 et seq.] does not annul, alter, or affect, or exempt any person subject to the provisions of this title [15 USCS §§ 1692 et seq.] from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this title [15 USCS §§ 1692 et seq.], and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this title [15 USCS §§ 1692 et seq.] if the protection such law affords any consumer is greater than the protection provided by this title [15 USCS §§ 1692 et seq.].

FREQUENTLY ASKED QUESTIONS FAIR DEBT COLLECTION PRACTICES ACT

1. What is the Fair Debt Collection Practices Act?

The Fair Debt Collection Practices Act (FDCPA) regulates the collection practices of debt collectors. The purpose of the FDCPA is to eliminate abusive, oppressive, threatening and deceptive debt collection practices. The FDCPA was enacted by Congress to protect consumers from deceitful debt collectors, regardless of whether the consumer owes a valid debt.

2. Who is a “consumer” under the FDCPA?

A consumer is any natural person obligated or allegedly obligated to pay any debt. The protections afforded to consumers by the FDCPA do not extend to businesses.

3. What debts are covered by the FDCPA?

The FDCPA covers debt arising out of a transaction which is primarily for “personal, family, or household purposes.” It includes obligations that result from both credit and non-credit consumer transactions (e.g., credit card debt, judgments, student loans, medical bills, auto loans, medical bills, and mortgages). The FDCPA does not cover loans made for business purposes. Certain taxes are considered debts along with

utility obligations. However, fines, parking tickets and court imposed penalties are generally not considered debts.

4. Who is a “debt collector” under the FDCPA?

A debt collector is 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. A debt collector is any individual or entity whose primary business purpose is the collection of a debt owed another and whose communication methods include calling the consumer via telephone and/or sending the consumer collection letters through the mail. Virtually all third-party collection agencies and collection attorneys are considered debt collectors under the FDCPA.

5. Who is a “creditor” under the FDCPA?

A creditor is any person who either offers or extends credit to a consumer. It does not include a person that was assigned or transferred a debt in default solely for the purpose of collecting the debt for another. The definition excludes a party that was assigned a delinquent debt only for collection purposes, such as traditional third-party debt collectors.

6. What is a “communication” under the FDCPA?

A communication is the conveying of information with respect to a debt directly or indirectly to *any* person through any medium. This includes written and oral communication that refers to a debt.

7. What is the consumer’s “location information” and what may a debt collector do to acquire such information?

Location information means a consumer’s home address, home telephone number, and place of employment **only**. The debt collector may not request the consumer’s work phone number or dates of employment. The debt collector may not request this information if it already has it or knows it.

If a debt collector communicates with any person other than the consumer for the purposes of obtaining location information about the consumer, a debt collector must, among other things, identify himself, state that he is confirming or correcting location information concerning the consumer. He only need identify his employer if such information is specifically requested. The debt collector cannot, among other things, state that the consumer owes any debt; communicate with any person more than

once unless specifically requested to do so; or communicate with any person other than the consumer's attorney after the debt collector knows the consumer is represented by an attorney with respect to the debt.

8. When can a debt collector communicate with third parties regarding the consumer's debt?

With the exception of obtaining location information and communicating with the consumer's attorney, a debt collector cannot contact any third party without the consumer's prior consent or court permission. The only information a debt collector can request from a third party is the consumer's location information.

9. When and where can a debt collector contact a consumer?

A debt collector may not contact a consumer at inconvenient times (before 8:00 a.m. or after 9:00 p.m. in the time zone where the consumer lives) or inconvenient places, unless the debt collector obtains the consumer's prior consent. A debt collector may not contact a consumer between 8:00 a.m. and 9:00 p.m. if the debt collector knows or has reason to know these hours are inconvenient to the consumer. If a debt collector is told orally or in writing that a consumer is not allowed to receive calls at work, the debt collector may no longer contact the consumer at work. If a

consumer requests not to be contacted on any day of the week, the debt collector may not contact the consumer on that day. If the debt collector knows the consumer is represented by an attorney with respect to the debt, and has knowledge of, or can readily obtain the attorney's name and address, the debt collector cannot communicate with the consumer.

10. In order to comply with the FDCPA, what must a debt collector do when it first contacts a consumer regarding the consumer's debt?

In the initial communication with a consumer, the debt collector must disclose that he is attempting to collect a debt and that any information obtained will be used for that purpose.

A debt collector must provide a consumer with notice of certain rights the consumer has under the FDCPA. If the following information is not contained in the initial communication with a consumer in connection with the collection of any debt, within five days after the initial communication, the debt collector must send the consumer a written notice containing:

- 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 after receipt of the notice, disputes the validity of the debt, the debt will be assumed to be valid by the debt collector;
- 4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt is disputed, the debt collector will obtain verification of the debt and provide it to the consumer;
- 5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

11. Can a debt collector continue to attempt to collect a debt, during the thirty-day validation period?

Yes. However, a debt collector cannot demand that the consumer take any action before the expiration of the thirty-day period.

12. If a consumer orally requests validation of the debt, is a debt collector required to send a verification of the debt to the consumer?

No. A debt collector is not required to provide verification unless the consumer sends a written

dispute or request for verification. However, a debt collector may voluntarily provide verification in response to an oral request.

13. If a consumer sends a written request for validation or verification, may a debt collector continue to attempt to collect the debt?

No. Once a debt collector receives a consumer's written dispute or written request for verification, the FDCPA requires that the debt collector cease all collection efforts until the verification is mailed to the consumer.

14. Can a debt collector credit report an account after it receives a written request for verification?

No. Credit reporting is considered collection activity. If an account has already been reported prior to the request for verification, the debt collector must cease updating the account to the Consumer Reporting Agencies until after it has verified the debt to the consumer.

15. Is a debt collector required to provide verification of the debt within a certain period of time?

No. The FDCPA does not require a debt collector to verify a debt within a certain period of time. As long as the debt collector ceases all collection efforts, there is no time limit for the debt collector

to verify the debt. A debt collector can choose to cease collection altogether and not verify the debt.

16. If a consumer requests verification of the debt after the thirty-day validation period, does a debt collector have to provide the verification?

No. A debt collector is not obligated to provide verification after the expiration of the validation period.

17. In order to comply with the FDCPA, what must a debt collector do in communications with a consumer regarding the consumer's debt?

All communications after the initial written communication must disclose to the consumer that the communication is from a debt collector.

18. When must a debt collector stop communicating with a consumer?

If the consumer, the consumer's spouse, or the consumer's parent (if the consumer is a minor) notifies the debt collector in writing that the consumer refuses to pay a debt or that the consumer wants the debt collector to stop communicating with the consumer, then the debt collector can no longer communicate with the consumer with respect to the debt except in the following situations:

- 1) to advise the consumer that the debt collector's further efforts are being terminated;
- 2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked;
- 3) to notify the consumer that the debt collector intends to invoke a specified remedy.

19. What types of conduct by a debt collector are a violation of the FDCPA?

In connection with the collection of a debt, a debt collector cannot:

- 1) harass or abuse any person, which includes but is not limited to the following conduct:
 - a. using or threatening to use violence or other criminal means to harm any person (including a person's reputation or property);
 - b. using obscene, profane, or abusive language; or
 - c. repeatedly or continuously calling any person with the intent to annoy, abuse, or harass.

- 2) use false, deceptive, or misleading representation, including but not limited to the following conduct:
 - a. falsely representing the character, amount or legal status of any debt;
 - b. falsely representing any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt;
 - c. falsely representing or implying that any individual is an attorney or that any communication is from an attorney;
 - d. falsely representing or implying that the nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action; or
 - e. falsely representing or implying that the consumer committed any crime.
- 3) threaten to take any action that cannot legally be taken or that is not intended to be taken;

- 4) distribute any written communication which creates a false impression as to its source, authorization or approval;
- 5) use any business, company, or organization name other than the true name of the debt collector's business, company, or organization;
- 6) communicate with a consumer by postcard regarding a debt;
- 7) use unfair or unconscionable means to collect or attempt to collect any debt, including but not limited to the following conduct:
 - a. collecting any amount of money (including any interest, fee, or charge) unless such amount is expressly authorized by the agreement creating the debt or permitted by law; or
 - b. taking or threatening to take any nonjudicial action to take property if there is no right to possession of the property, if there is no present intent to take possession of the property, or if the property cannot legally be taken.

20. If a consumer owes multiple debts, how may a debt collector apply a payment by the consumer?

If a consumer who owes multiple debts makes a single payment to a debt collector, the debt collector must apply the payment in accordance with the consumer's instructions and may not apply the payment to any debt which is disputed by the consumer.

21. What does liability under the FDCPA entail?

A debt collector who fails to comply with any provision of the FDCPA is liable to the consumer for the following:

- 1) any actual damage sustained as a result of the failure;
- 2) in individual actions, such additional damages as the court may allow, but not exceeding \$1,000; and
- 3) in a class action, up to \$500,000 or one percent (1%) of the net worth of the defendant, whichever is less, in addition to up to \$1,000 for each named plaintiff.

Additionally, in any successful FDCPA action, the consumer's attorney can recover the costs of the action and reasonable attorneys' fees, determined by the court.

22. What factors does a court take into account in determining the amount of liability in any FDCPA action?

In an individual action, the court will consider the frequency and persistence of noncompliance by the debt collector, the nature of the noncompliance, and the extent to which the noncompliance was intentional. In a class action, the court will also consider the resources of the debt collector and the number of persons adversely affected.

23. Can the federal government enforce the FDCPA?

Yes. The federal government reserves the right to bring an administrative enforcement action against a debt collector when the protection of the general public is at issue. Under the FDCPA, the federal government may be authorized to pursue injunctive or declaratory relief in addition to damages for civil liability.

24. Does a debt collector have any defenses to liability under the FDCPA?

Yes. A debt collector that violates any substantial provision of the FDCPA may avoid liability by proving one of the following:

- (a) the violation was unintentional, resulting from a “bona fide error,” and

(b) the error occurred despite procedures reasonably adapted to avoid such errors.

FAIR CREDIT REPORTING ACT – SELECTED SECTIONS

§ 1681a. Definitions; rules of construction

(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this title [15 USCS §§ 1681 et seq.].

(b) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term "consumer" means an individual.

(d) Consumer report.

(1) In general. The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness [creditworthiness], credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for—

(A) credit or insurance to be used primarily for personal, family, or household purposes;

(B) employment purposes; or

(C) any other purpose authorized under section 604 [15 USCS § 1681b].

(2) Exclusions. Except as provided in paragraph (3), the term "consumer report" does not include—

(A) subject to section 624 [15 USCS § 1681s-3], any—

(i) report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) communication of that information among persons related by common ownership or affiliated by corporate control; or

(iii) communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons;

(B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(C) any report in which a person who has been requested by a third party to make a specific

extension of credit directly or indirectly to a consumer conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under section 615 [15 USCS § 1681m]; or

(D) a communication described in subsection (o) or (x).

(3) Restriction on sharing of medical information. Except for information or any communication of information disclosed as provided in section 604(g)(3) [15 USCS § 1681b(g)(3)], the exclusions in paragraph (2) shall not apply with respect to information disclosed to any person related by common ownership or affiliated by corporate control, if the information is—

(A) medical information;

(B) an individualized list or description based on the payment transactions of the consumer for medical products or services; or

(C) an aggregate list of identified consumers based on payment transactions for medical products or services.

(e) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general

reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(g) The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(h) The term "employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for

employment, promotion, reassignment or retention as an employee.

(i) Medical information. The term "medical information"—

(1) means information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to—

(A) the past, present, or future physical, mental, or behavioral health or condition of an individual;

(B) the provision of health care to an individual; or

(C) the payment for the provision of health care to an individual.

(2) does not include the age or gender of a consumer, demographic information about the consumer, including a consumer's residence address or e-mail address, or any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy.

(j) Definitions relating to child support obligations.

(1) Overdue support. The term "overdue support" has the meaning given to such term in section 466(e) of the Social Security Act [42 USCS § 666(e)].

(2) State or local child support enforcement agency. The term "State or local child support enforcement agency" means a State or local agency which administers a State or local program for establishing and enforcing child support obligations.

(k) Adverse action.

(1) Actions included. The term "adverse action"—

(A) has the same meaning as in section 701(d)(6) of the Equal Credit Opportunity Act [15 USCS § 1691(d)(6)]; and

(B) means—

(i) a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance;

(ii) a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;

(iii) a denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of, any license or

benefit described in section 604(a)(3)(D) [15 USCS § 1681b(a)(3)(D)]; and

(iv) an action taken or determination that is—

(I) made in connection with an application that was made by, or a transaction that was initiated by, any consumer, or in connection with a review of an account under section 604(a)(3)(F)(ii) [15 USCS § 1681b(a)(3)(F)(ii)]; and

(II) adverse to the interests of the consumer.

(2) Applicable findings, decisions, commentary, and orders. For purposes of any determination of whether an action is an adverse action under paragraph (1)(A), all appropriate final findings, decisions, commentary, and orders issued under section 701(d)(6) of the Equal Credit Opportunity Act [15 USCS § 1691(d)(6)] by the Board of Governors of the Federal Reserve System or any court shall apply.

(1) Firm offer of credit or insurance. The term "firm offer of credit or insurance" means any offer of credit or insurance to a consumer that will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer, except that the offer may be further conditioned on one or more of the following:

(1) The consumer being determined, based on information in the consumer's application for the credit or insurance, to meet specific criteria bearing on credit worthiness [creditworthiness] or insurability, as applicable, that are established—

(A) before selection of the consumer for the offer; and

(B) for the purpose of determining whether to extend credit or insurance pursuant to the offer.

(2) Verification.

(A) that the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in a consumer report on the consumer, information in the consumer's application for the credit or insurance, or other information bearing on the credit worthiness [creditworthiness] or insurability of the consumer; or

(B) of the information in the consumer's application for the credit or insurance, to determine that the consumer meets the specific criteria bearing on credit worthiness [creditworthiness] or insurability.

(3) The consumer furnishing any collateral that is a requirement for the extension of the credit or insurance that was—

(A) established before selection of the consumer for the offer of credit or insurance; and

(B) disclosed to the consumer in the offer of credit or insurance.

(m) Credit or insurance transaction that is not initiated by the consumer. The term "credit or insurance transaction that is not initiated by the consumer" does not include the use of a consumer report by a person with which the consumer has an account or insurance policy, for purposes of—

- (1) reviewing the account or insurance policy; or
- (2) collecting the account.

(n) State. The term "State" means any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(o) Excluded communications. A communication is described in this subsection if it is a communication—

(1) that, but for subsection (d)(2)(D), would be an investigative consumer report;

(2) that is made to a prospective employer for the purpose of—

(A) procuring an employee for the employer;
or

(B) procuring an opportunity for a natural person to work for the employer;

(3) that is made by a person who regularly performs such procurement;

(4) that is not used by any person for any purpose other than a purpose described in subparagraph (A) or (B) of paragraph (2); and

(5) with respect to which—

(A) the consumer who is the subject of the communication—

(i) consents orally or in writing to the nature and scope of the communication, before the collection of any information for the purpose of making the communication;

(ii) consents orally or in writing to the making of the communication to a prospective employer, before the making of the communication; and

(iii) in the case of consent under clause (i) or (ii) given orally, is provided written confirmation of that consent by the person making the communication, not later than 3 business days after the receipt of the consent by that person;

(B) the person who makes the communication does not, for the purpose of making the communication, make any inquiry that if made by a prospective employer of the consumer who is the subject of the communication would violate any

applicable Federal or State equal employment opportunity law or regulation; and

(C) the person who makes the communication—

(i) discloses in writing to the consumer who is the subject of the communication, not later than 5 business days after receiving any request from the consumer for such disclosure, the nature and substance of all information in the consumer's file at the time of the request, except that the sources of any information that is acquired solely for use in making the communication and is actually used for no other purpose, need not be disclosed other than under appropriate discovery procedures in any court of competent jurisdiction in which an action is brought; and

(ii) notifies the consumer who is the subject of the communication, in writing, of the consumer's right to request the information described in clause (i).

(p) Consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. The term "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" means a consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on

a consumer's credit worthiness [creditworthiness], credit standing, or credit capacity, each of the following regarding consumers residing nationwide:

(1) Public record information.

(2) Credit account information from persons who furnish that information regularly and in the ordinary course of business.

(q) Definitions relating to fraud alerts.

(1) Active duty military consumer. The term "active duty military consumer" means a consumer in military service who—

(A) is on active duty (as defined in section 101(d)(1) of title 10, United States Code) or is a reservist performing duty under a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10, United States Code; and

(B) is assigned to service away from the usual duty station of the consumer.

(2) Fraud alert; active duty alert. The terms "fraud alert" and "active duty alert" mean a statement in the file of a consumer that—

(A) notifies all prospective users of a consumer report relating to the consumer that the consumer may be a victim of fraud, including identity theft, or is an active duty military consumer, as applicable; and

(B) is presented in a manner that facilitates a clear and conspicuous view of the statement described in subparagraph (A) by any person requesting such consumer report.

(3) Identity theft. The term "identity theft" means a fraud committed using the identifying information of another person, subject to such further definition as the Commission may prescribe, by regulation.

(4) Identity theft report. The term "identity theft report" has the meaning given that term by rule of the Commission, and means, at a minimum, a report—

(A) that alleges an identity theft;

(B) that is a copy of an official, valid report filed by a consumer with an appropriate Federal, State, or local law enforcement agency, including the United States Postal Inspection Service, or such other government agency deemed appropriate by the Commission; and

(C) the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information if, in fact, the information in the report is false.

(5) New credit plan. The term "new credit plan" means a new account under an open end credit plan (as defined in section 103(i) of the Truth in Lending Act

[15 USCS § 1602(i)] or a new credit transaction not under an open end credit plan.

(r) Credit and debit related terms.

(1) Card issuer. The term "card issuer" means—

(A) a credit card issuer, in the case of a credit card; and

(B) a debit card issuer, in the case of a debit card.

(2) Credit card. The term "credit card" has the same meaning as in section 103 of the Truth in Lending Act [15 USCS § 1602].

(3) Debit card. The term "debit card" means any card issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account of the consumer at such financial institution, for the purpose of transferring money between accounts or obtaining money, property, labor, or services.

(4) Account and electronic fund transfer. The terms "account" and "electronic fund transfer" have the same meanings as in section 903 of the Electronic Fund Transfer Act [15 USCS § 1693a].

(5) Credit and creditor. The terms "credit" and "creditor" have the same meanings as in section 702 of the Equal Credit Opportunity Act [15 USCS § 1691a].

(s) Federal banking agency. The term "Federal banking agency" has the same meaning as in section 3 of the Federal Deposit Insurance Act [12 USCS § 1813].

(t) Financial institution. The term "financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds a transaction account (as defined in section 19(b) of the Federal Reserve Act [12 USCS § 461]) belonging to a consumer.

(u) Reseller. The term "reseller" means a consumer reporting agency that—

(1) assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and

(2) does not maintain a database of the assembled or merged information from which new consumer reports are produced.

(v) Commission. The term "Commission" means the Federal Trade Commission.

(w) Nationwide specialty consumer reporting agency. The term "nationwide specialty consumer

reporting agency" means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis relating to—

- (1) medical records or payments;
- (2) residential or tenant history;
- (3) check writing history;
- (4) employment history; or
- (5) insurance claims.

(x) Exclusion of certain communications for employee investigations.

(1) Communications described in this subsection. A communication is described in this subsection if—

(A) but for subsection (d)(2)(D), the communication would be a consumer report;

(B) the communication is made to an employer in connection with an investigation of—

(i) suspected misconduct relating to employment; or

(ii) compliance with Federal, State, or local laws and regulations, the rules of a self-regulatory organization, or any preexisting written policies of the employer;

(C) the communication is not made for the purpose of investigating a consumer's credit worthiness [creditworthiness], credit standing, or credit capacity; and

(D) the communication is not provided to any person except—

(i) to the employer or an agent of the employer;

(ii) to any Federal or State officer, agency, or department, or any officer, agency, or department of a unit of general local government;

(iii) to any self-regulatory organization with regulatory authority over the activities of the employer or employee;

(iv) as otherwise required by law; or

(v) pursuant to section 608 [15 USCS § 1681f].

(2) Subsequent disclosure. After taking any adverse action based in whole or in part on a communication described in paragraph (1), the employer shall disclose to the consumer a summary containing the nature and substance of the communication upon which the adverse action is based, except that the sources of information acquired solely for use in preparing what would be but for

subsection (d)(2)(D) an investigative consumer report need not be disclosed.

(3) Self-regulatory organization defined. For purposes of this subsection, the term "self-regulatory organization" includes any self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934 [15 USCS § 78c(a)(26)]), any entity established under title I of the Sarbanes-Oxley Act of 2002 [15 USCS §§ 7211 et seq.], any board of trade designated by the Commodity Futures Trading Commission, and any futures association registered with such Commission.

§ 1681b. Permissible purposes of consumer reports

(a) In general. Subject to subsection (c), any consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe—

(A) intends to use the information in connection with a credit transaction involving the

consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) intends to use the information for employment purposes; or

(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation; or

(F) otherwise has a legitimate business need for the information—

(i) in connection with a business transaction that is initiated by the consumer; or

(ii) to review an account to determine whether the consumer continues to meet the terms of the account.

(G) executive departments and agencies in connection with the issuance of government-sponsored individually-billed travel charge cards.

(4) In response to a request by the head of a State or local child support enforcement agency (or a State or local government official authorized by the head of such an agency), if the person making the request certifies to the consumer reporting agency that—

(A) the consumer report is needed for the purpose of establishing an individual's capacity to make child support payments or determining the appropriate level of such payments;

(B) the paternity of the consumer for the child to which the obligation relates has been established or acknowledged by the consumer in accordance with State laws under which the obligation arises (if required by those laws);

(C) the person has provided at least 10 days' prior notice to the consumer whose report is requested, by certified or registered mail to the last known address of the consumer, that the report will be requested; and

(D) the consumer report will be kept confidential, will be used solely for a purpose described in subparagraph (A), and will not be used in connection with any other civil, administrative, or criminal proceeding, or for any other purpose.

(5) To an agency administering a State plan under section 454 of the Social Security Act (42 U.S.C. 654) for use to set an initial or modified child support award.

(6) To the Federal Deposit Insurance Corporation or the National Credit Union Administration as part of its preparation for its appointment or as part of its exercise of powers, as conservator, receiver, or liquidating agent for an insured depository institution or insured credit union under the Federal Deposit Insurance Act [12 USCS §§ 1811 et seq.] or the Federal Credit Union Act [12 USCS §§ 1751 et seq.], or other applicable Federal or State law, or in connection with the resolution or liquidation of a failed or failing insured depository institution or insured credit union, as applicable.

(b) Conditions for furnishing and using consumer reports for employment purposes.

(1) Certification from user. A consumer reporting agency may furnish a consumer report for employment purposes only if—

(A) the person who obtains such report from the agency certifies to the agency that—

(i) the person has complied with paragraph (2) with respect to the consumer report, and the person will comply with paragraph (3) with respect

to the consumer report if paragraph (3) becomes applicable; and

(ii) information from the consumer report will not be used in violation of any applicable Federal or State equal employment opportunity law or regulation; and

(B) the consumer reporting agency provides with the report, or has previously provided, a summary of the consumer's rights under this title [15 USCS §§ 1681 et seq.], as prescribed by the Federal Trade Commission under section 609(c)(3) [15 USCS § 1681g(c)(3)].

(2) Disclosure to consumer.

(A) In general. Except as provided in subparagraph (B), a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless—

(i) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and

(ii) the consumer has authorized in writing (which authorization may be made on the

document referred to in clause (i)) the procurement of the report by that person.

(B) Application by mail, telephone, computer, or other similar means. If a consumer described in subparagraph (C) applies for employment by mail, telephone, computer, or other similar means, at any time before a consumer report is procured or caused to be procured in connection with that application—

(i) the person who procures the consumer report on the consumer for employment purposes shall provide to the consumer, by oral, written, or electronic means, notice that a consumer report may be obtained for employment purposes, and a summary of the consumer's rights under section 615(a)(3) [15 USCS § 1681m(a)(3)]; and

(ii) the consumer shall have consented, orally, in writing, or electronically to the procurement of the report by that person.

(C) Scope. Subparagraph (B) shall apply to a person procuring a consumer report on a consumer in connection with the consumer's application for employment only if—

(i) the consumer is applying for a position over which the Secretary of Transportation has the power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502

of title 49, or a position subject to safety regulation by a State transportation agency; and

(ii) as of the time at which the person procures the report or causes the report to be procured the only interaction between the consumer and the person in connection with that employment application has been by mail, telephone, computer, or other similar means.

(3) Conditions on use for adverse actions.

(A) In general. Except as provided in subparagraph (B), in using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates—

(i) a copy of the report; and

(ii) a description in writing of the rights of the consumer under this title, as prescribed by the Federal Trade Commission under section 609(c)(3).

(B) Application by mail, telephone, computer, or other similar means.

(i) If a consumer described in subparagraph (C) applies for employment by mail, telephone, computer, or other similar means, and if a person who has procured a consumer report on the consumer for employment purposes takes adverse

action on the employment application based in whole or in part on the report, then the person must provide to the consumer to whom the report relates, in lieu of the notices required under subparagraph (A) of this section and under section 615(a) [15 USCS § 1681m(a)], within 3 business days of taking such action, an oral, written or electronic notification—

(I) that adverse action has been taken based in whole or in part on a consumer report received from a consumer reporting agency;

(II) of the name, address and telephone number of the consumer reporting agency that furnished the consumer report (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis);

(III) that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide to the consumer the specific reasons why the adverse action was taken; and

(IV) that the consumer may, upon providing proper identification, request a free copy of a report and may dispute with the consumer reporting agency the accuracy or completeness of any information in a report.

(ii) If, under clause (B)(i)(IV), the consumer requests a copy of a consumer report from

the person who procured the report, then, within 3 business days of receiving the consumer's request, together with proper identification, the person must send or provide to the consumer a copy of a report and a copy of the consumer's rights as prescribed by the Federal Trade Commission under section 609(c)(3) [15 USCS § 1681g(c)(3)].

(C) Scope. Subparagraph (B) shall apply to a person procuring a consumer report on a consumer in connection with the consumer's application for employment only if—

(i) the consumer is applying for a position over which the Secretary of Transportation has the power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of title 49, or a position subject to safety regulation by a State transportation agency; and

(ii) as of the time at which the person procures the report or causes the report to be procured the only interaction between the consumer and the person in connection with that employment application has been by mail, telephone, computer, or other similar means.

(4) Exception for national security investigations.

(A) In general. In the case of an agency or department of the United States Government which

seeks to obtain and use a consumer report for employment purposes, paragraph (3) shall not apply to any adverse action by such agency or department which is based in part on such consumer report, if the head of such agency or department makes a written finding that—

(i) the consumer report is relevant to a national security investigation of such agency or department;

(ii) the investigation is within the jurisdiction of such agency or department;

(iii) there is reason to believe that compliance with paragraph (3) will—

(I) endanger the life or physical safety of any person;

(II) result in flight from prosecution;

(III) result in the destruction of, or tampering with, evidence relevant to the investigation;

(IV) result in the intimidation of a potential witness relevant to the investigation;

(V) result in the compromise of classified information; or

(VI) otherwise seriously jeopardize or unduly delay the investigation or another official proceeding.

(B) Notification of consumer upon conclusion of investigation. Upon the conclusion of a national security investigation described in subparagraph (A), or upon the determination that the exception under subparagraph (A) is no longer required for the reasons set forth in such subparagraph, the official exercising the authority in such subparagraph shall provide to the consumer who is the subject of the consumer report with regard to which such finding was made –

(i) a copy of such consumer report with any classified information redacted as necessary;

(ii) notice of any adverse action which is based, in part, on the consumer report; and

(iii) the identification with reasonable specificity of the nature of the investigation for which the consumer report was sought.

(C) Delegation by head of agency or department. For purposes of subparagraphs (A) and (B), the head of any agency or department of the United States Government may delegate his or her authorities under this paragraph to an official of such agency or department who has personnel security responsibilities and is a member of the Senior Executive Service or equivalent civilian or military rank.

(D) Definitions. For purposes of this paragraph, the following definitions shall apply:

(i) Classified information. The term "classified information" means information that is protected from unauthorized disclosure under Executive Order No. 12958 [50 USCS § 401 note] or successor orders.

(ii) National security investigation. The term "national security investigation" means any official inquiry by an agency or department of the United States Government to determine the eligibility of a consumer to receive access or continued access to classified information or to determine whether classified information has been lost or compromised.

(c) Furnishing reports in connection with credit or insurance transactions that are not initiated by the consumer.

(1) In general. A consumer reporting agency may furnish a consumer report relating to any consumer pursuant to subparagraph (A) or (C) of subsection (a)(3) in connection with any credit or insurance transaction that is not initiated by the consumer only if—

(A) the consumer authorizes the agency to provide such report to such person; or

(B)

(i) the transaction consists of a firm offer of credit or insurance;

(ii) the consumer reporting agency has complied with subsection (e);

(iii) there is not in effect an election by the consumer, made in accordance with subsection (e), to have the consumer's name and address excluded from lists of names provided by the agency pursuant to this paragraph; and

(iv) the consumer report does not contain a date of birth that shows that the consumer has not attained the age of 21, or, if the date of birth on the consumer report shows that the consumer has not attained the age of 21, such consumer consents to the consumer reporting agency to such furnishing.

(2) Limits on information received under paragraph (1)(b). A person may receive pursuant to paragraph (1)(B) only—

(A) the name and address of a consumer;

(B) an identifier that is not unique to the consumer and that is used by the person solely for the purpose of verifying the identity of the consumer; and

(C) other information pertaining to a consumer that does not identify the relationship or experience of the consumer with respect to a particular creditor or other entity.

(3) Information regarding inquiries. Except as provided in section 609(a)(5) [15 USCS § 1681g(a)(5)], a consumer reporting agency shall not furnish to any person a record of inquiries in connection with a credit or insurance transaction that is not initiated by a consumer.

(d) [Reserved]

(e) Election of consumer to be excluded from lists.

(1) In general. A consumer may elect to have the consumer's name and address excluded from any list provided by a consumer reporting agency under subsection (c)(1)(B) in connection with a credit or insurance transaction that is not initiated by the consumer by notifying the agency in accordance with paragraph (2) that the consumer does not consent to any use of a consumer report relating to the consumer in connection with any credit or insurance transaction that is not initiated by the consumer.

(2) Manner of notification. A consumer shall notify a consumer reporting agency under paragraph (1)—

(A) through the notification system maintained by the agency under paragraph (5); or

(B) by submitting to the agency a signed notice of election form issued by the agency for purposes of this subparagraph.

(3) Response of agency after notification through system. Upon receipt of notification of the election of a consumer under paragraph (1) through the notification system maintained by the agency under paragraph (5), a consumer reporting agency shall—

(A) inform the consumer that the election is effective only for the 5-year period following the election if the consumer does not submit to the agency a signed notice of election form issued by the agency for purposes of paragraph (2)(B); and

(B) provide to the consumer a notice of election form, if requested by the consumer, not later than 5 business days after receipt of the notification of the election through the system established under paragraph (5), in the case of a request made at the time the consumer provides notification through the system.

(4) Effectiveness of election. An election of a consumer under paragraph (1)—

(A) shall be effective with respect to a consumer reporting agency beginning 5 business days after the date on which the consumer notifies the agency in accordance with paragraph (2);

(B) shall be effective with respect to a consumer reporting agency—

(i) subject to subparagraph (C), during the 5-year period beginning 5 business days after the date on which the consumer notifies the agency of the

election, in the case of an election for which a consumer notifies the agency only in accordance with paragraph (2)(A); or

(ii) until the consumer notifies the agency under subparagraph (C), in the case of an election for which a consumer notifies the agency in accordance with paragraph (2)(B);

(C) shall not be effective after the date on which the consumer notifies the agency, through the notification system established by the agency under paragraph (5), that the election is no longer effective; and

(D) shall be effective with respect to each affiliate of the agency.

(5) Notification system.

(A) In general. Each consumer reporting agency that, under subsection (c)(1)(B), furnishes a consumer report in connection with a credit or insurance transaction that is not initiated by a consumer shall—

(i) establish and maintain a notification system, including a toll-free telephone number, which permits any consumer whose consumer report is maintained by the agency to notify the agency, with appropriate identification, of the consumer's election to have the consumer's name and address excluded from

any such list of names and addresses provided by the agency for such a transaction; and

(ii) publish by not later than 365 days after the date of enactment of the Consumer Credit Reporting Reform Act of 1996 [enacted Sept. 30, 1996], and not less than annually thereafter, in a publication of general circulation in the area served by the agency—

(I) a notification that information in consumer files maintained by the agency may be used in connection with such transactions; and

(II) the address and toll-free telephone number for consumers to use to notify the agency of the consumer's election under clause (i).

(B) Establishment and maintenance as compliance. Establishment and maintenance of a notification system (including a toll-free telephone number) and publication by a consumer reporting agency on the agency's own behalf and on behalf of any of its affiliates in accordance with this paragraph is deemed to be compliance with this paragraph by each of those affiliates.

(6) Notification system by agencies that operate nationwide. Each consumer reporting agency that compiles and maintains files on consumers on a nationwide basis shall establish and maintain a

notification system for purposes of paragraph (5) jointly with other such consumer reporting agencies.

(f) Certain use or obtaining of information prohibited. A person shall not use or obtain a consumer report for any purpose unless—

(1) the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and

(2) the purpose is certified in accordance with section 607 [15 USCS § 1681e] by a prospective user of the report through a general or specific certification.

(g) Protection of medical information.

(1) Limitation on consumer reporting agencies. A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction, a consumer report that contains medical information (other than medical contact information treated in the manner required under section 605(a)(6) [15 USCS § 1681c(a)(6)]) about a consumer, unless—

(A) if furnished in connection with an insurance transaction, the consumer affirmatively consents to the furnishing of the report;

(B) if furnished for employment purposes or in connection with a credit transaction—

(i) the information to be furnished is relevant to process or effect the employment or credit transaction; and

(ii) the consumer provides specific written consent for the furnishing of the report that describes in clear and conspicuous language the use for which the information will be furnished; or

(C) the information to be furnished pertains solely to transactions, accounts, or balances relating to debts arising from the receipt of medical services, products, or devices, where such information, other than account status or amounts, is restricted or reported using codes that do not identify, or do not provide information sufficient to infer, the specific provider or the nature of such services, products, or devices, as provided in section 605(a)(6) [15 USCS § 1681c(a)(6)].

(2) Limitation on creditors. Except as permitted pursuant to paragraph (3)(C) or regulations prescribed under paragraph (5)(A), a creditor shall not obtain or use medical information (other than medical information treated in the manner required under section 605(a)(6) [15 USCS § 1681c(a)(6)]) pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit.

(3) Actions authorized by Federal law, insurance activities and regulatory determinations. Section

603(d)(3) [15 USCS § 1681a(d)(3)] shall not be construed so as to treat information or any communication of information as a consumer report if the information or communication is disclosed—

(A) in connection with the business of insurance or annuities, including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners (as in effect on January 1, 2003);

(B) for any purpose permitted without authorization under the Standards for Individually Identifiable Health Information promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996, or referred to under section 1179 of such Act [section 1179 of the Social Security Act (42 USCS § 1320d-8)], or described in section 502(e) of Public Law 106-102 [15 USCS § 6802]; or

(C) as otherwise determined to be necessary and appropriate, by regulation or order and subject to paragraph (6), by the Commission, any Federal banking agency or the National Credit Union Administration (with respect to any financial institution subject to the jurisdiction of such agency or Administration under paragraph (1), (2), or (3) of section 621(b) [15 USCS § 1681s(b)], or the applicable

State insurance authority (with respect to any person engaged in providing insurance or annuities).

(4) Limitation on redisclosure of medical information. Any person that receives medical information pursuant to paragraph (1) or (3) shall not disclose such information to any other person, except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

(5) Regulations and effective date for paragraph (2).

(A) Regulations required. Each Federal banking agency and the National Credit Union Administration shall, subject to paragraph (6) and after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (and which shall include permitting actions necessary for administrative verification purposes), consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.

(B) Final regulations required. The Federal banking agencies and the National Credit Union Administration shall issue the regulations required under subparagraph (A) in final form before the end of the 6-month period beginning on the date of enactment

of the Fair and Accurate Credit Transactions Act of 2003 [enacted Dec. 4, 2003].

(6) Coordination with other laws. No provision of this subsection shall be construed as altering, affecting, or superseding the applicability of any other provision of Federal law relating to medical confidentiality.

§ 1681n. Civil liability for willful noncompliance

(a) In general. Any person who willfully fails to comply with any requirement imposed under this title [15 USCS §§ 1681 et seq.] with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1)

(A) any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000; or

(B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or \$1,000, whichever is greater;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Civil liability for knowing noncompliance. Any person who obtains a consumer report from a consumer reporting agency under false pretenses or knowingly without a permissible purpose shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or \$1,000, whichever is greater.

(c) Attorney's fees. Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

(d) Clarification of willful noncompliance. For the purposes of this section, any person who printed an expiration date on any receipt provided to a consumer cardholder at a point of sale or transaction between December 4, 2004, and the date of the enactment of this subsection [enacted June 3, 2008] but otherwise complied with the requirements of section 605(g) [15 USCS § 1681c(g)] for such receipt shall not be in willful noncompliance with section 605(g) [15 USCS §

1681c(g)] by reason of printing such expiration date on the receipt.

§ 1681o. Civil liability for negligent noncompliance

(a) In general. Any person who is negligent in failing to comply with any requirement imposed under this title [15 USCS §§ 1681 et seq.] with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure; and

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Attorney's fees. On a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

§ 1681p. Jurisdiction of courts; limitation of actions

An action to enforce any liability created under this title [15 USCS §§ 1681 et seq.] 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, not later than the earlier of—

(1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or

(2) 5 years after the date on which the violation that is the basis for such liability occurs.

§ 1681s-2. Responsibilities of furnishers of information to consumer reporting agencies

(a) Duty of furnishers of information to provide accurate information.

(1) Prohibition.

(A) Reporting information with actual knowledge of errors. A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.

(B) Reporting information after notice and confirmation of errors. A person shall not furnish

information relating to a consumer to any consumer reporting agency if

(i) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and

(ii) the information is, in fact, inaccurate.

(C) No address requirement. A person who clearly and conspicuously specifies to the consumer an address for notices referred to in subparagraph (B) shall not be subject to subparagraph (A); however, nothing in subparagraph (B) shall require a person to specify such an address.

(D) Definition. For purposes of subparagraph (A), the term "reasonable cause to believe that the information is inaccurate" means having specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information.

(2) Duty to correct and update information. A person who—

(A) regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person's transactions or experiences with any consumer; and

(B) has furnished to a consumer reporting agency information that the person determines is not complete or accurate, shall promptly notify the consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, and shall not thereafter furnish to the agency any of the information that remains not complete or accurate.

(3) Duty to provide notice of dispute. If the completeness or accuracy of any information furnished by any person to any consumer reporting agency is disputed to such person by a consumer, the person may not furnish the information to any consumer reporting agency without notice that such information is disputed by the consumer.

(4) Duty to provide notice of closed accounts. A person who regularly and in the ordinary course of business furnishes information to a consumer reporting agency regarding a consumer who has a credit account with that person shall notify the agency of the voluntary closure of the account by the consumer, in information regularly furnished for the period in which the account is closed.

(5) Duty to provide notice of delinquency of accounts.

(A) In general. A person who furnishes information to a consumer reporting agency regarding a delinquent account being placed for collection, charged to profit or loss, or subjected to any similar action shall, not later than 90 days after furnishing the information, notify the agency of the date of delinquency on the account, which shall be the month and year of the commencement of the delinquency on the account that immediately preceded the action.

(B) Rule of construction. For purposes of this paragraph only, and provided that the consumer does not dispute the information, a person that furnishes information on a delinquent account that is placed for collection, charged for profit or loss, or subjected to any similar action, complies with this paragraph, if—

(i) the person reports the same date of delinquency as that provided by the creditor to which the account was owed at the time at which the commencement of the delinquency occurred, if the creditor previously reported that date of delinquency to a consumer reporting agency;

(ii) the creditor did not previously report the date of delinquency to a consumer reporting agency, and the person establishes and follows reasonable procedures to obtain the date of delinquency from the creditor or another reliable source and reports that date to a consumer reporting agency as the date of delinquency; or

(iii) the creditor did not previously report the date of delinquency to a consumer reporting agency and the date of delinquency cannot be reasonably obtained as provided in clause (ii), the person establishes and follows reasonable procedures to ensure the date reported as the date of delinquency precedes the date on which the account is placed for collection, charged to profit or loss, or subjected to any similar action, and reports such date to the credit reporting agency.

(6) Duties of furnishers upon notice of identity theft-related information.

(A) Reasonable procedures. A person that furnishes information to any consumer reporting agency shall have in place reasonable procedures to respond to any notification that it receives from a consumer reporting agency under section 605B [15 USCS § 1681c-2] relating to information resulting from identity theft, to prevent that person from refurnishing such blocked information.

(B) Information alleged to result from identity theft. If a consumer submits an identity theft report to a person who furnishes information to a consumer reporting agency at the address specified by that person for receiving such reports stating that information maintained by such person that purports to relate to the consumer resulted from identity theft, the person may not furnish such information that purports

to relate to the consumer to any consumer reporting agency, unless the person subsequently knows or is informed by the consumer that the information is correct.

(7) Negative information.

(A) Notice to consumer required.

(i) In general. If any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency described in section 603(p) [15 USCS § 1681a(p)] furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information, in writing, to the customer.

(ii) Notice effective for subsequent submissions. After providing such notice, the financial institution may submit additional negative information to a consumer reporting agency described in section 603(p) [15 USCS § 1681a(p)] with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer.

(B) Time of notice.

(i) In general. The notice required under subparagraph (A) shall be provided to the customer prior to, or no later than 30 days after, furnishing the

negative information to a consumer reporting agency described in section 603(p) [15 USCS § 1681a(p)].

(ii) Coordination with new account disclosures. If the notice is provided to the customer prior to furnishing the negative information to a consumer reporting agency, the notice may not be included in the initial disclosures provided under section 127(a) of the Truth in Lending Act [15 USCS § 1637(a)].

(C) Coordination with other disclosures. The notice required under subparagraph (A)—

(i) may be included on or with any notice of default, any billing statement, or any other materials provided to the customer; and

(ii) must be clear and conspicuous.

(D) Model disclosure.

(i) Duty of Board to prepare. The Board shall prescribe a brief model disclosure a financial institution may use to comply with subparagraph (A), which shall not exceed 30 words.

(ii) Use of model not required. No provision of this paragraph shall be construed as requiring a financial institution to use any such model form prescribed by the Board.

(iii) Compliance using model. A financial institution shall be deemed to be in compliance with

subparagraph (A) if the financial institution uses any such model form prescribed by the Board, or the financial institution uses any such model form and rearranges its format.

(E) Use of notice without submitting negative information. No provision of this paragraph shall be construed as requiring a financial institution that has provided a customer with a notice described in subparagraph (A) to furnish negative information about the customer to a consumer reporting agency.

(F) Safe harbor. A financial institution shall not be liable for failure to perform the duties required by this paragraph if, at the time of the failure, the financial institution maintained reasonable policies and procedures to comply with this paragraph or the financial institution reasonably believed that the institution is prohibited, by law, from contacting the consumer.

(G) Definitions. For purposes of this paragraph, the following definitions shall apply:

(i) Negative information. The term "negative information" means information concerning a customer's delinquencies, late payments, insolvency, or any form of default.

(ii) Customer; financial institution. The terms "customer" and "financial institution" have the

same meanings as in section 509 Public Law 106-102 [15 USCS § 6809].

(8) Ability of consumer to dispute information directly with furnisher.

(A) In general. The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly prescribe regulations that shall identify the circumstances under which a furnisher shall be required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report on the consumer, based on a direct request of a consumer.

(B) Considerations. In prescribing regulations under subparagraph (A), the agencies shall weigh—

(i) the benefits to consumers with the costs on furnishers and the credit reporting system;

(ii) the impact on the overall accuracy and integrity of consumer reports of any such requirements;

(iii) whether direct contact by the consumer with the furnisher would likely result in the most expeditious resolution of any such dispute; and

(iv) the potential impact on the credit reporting process if credit repair organizations, as defined in section 403(3) [15 USCS § 1679a(3)], including entities that would be a credit repair

organization, but for section 403(3)(B)(i) [15 USCS § 1679a(3)(B)(i)], are able to circumvent the prohibition in subparagraph (G).

(C) Applicability. Subparagraphs (D) through (G) shall apply in any circumstance identified under the regulations promulgated under subparagraph (A).

(D) Submitting a notice of dispute. A consumer who seeks to dispute the accuracy of information shall provide a dispute notice directly to such person at the address specified by the person for such notices that—

(i) identifies the specific information that is being disputed;

(ii) explains the basis for the dispute; and

(iii) includes all supporting documentation required by the furnisher to substantiate the basis of the dispute.

(E) Duty of person after receiving notice of dispute. After receiving a notice of dispute from a consumer pursuant to subparagraph (D), the person that provided the information in dispute to a consumer reporting agency shall—

(i) conduct an investigation with respect to the disputed information;

(ii) review all relevant information provided by the consumer with the notice;

(iii) complete such person's investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 611(a)(1) [15 USCS § 1681i(a)(1)] within which a consumer reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section; and

(iv) if the investigation finds that the information reported was inaccurate, promptly notify each consumer reporting agency to which the person furnished the inaccurate information of that determination and provide to the agency any correction to that information that is necessary to make the information provided by the person accurate.

(F) Frivolous or irrelevant dispute.

(i) In general. This paragraph shall not apply if the person receiving a notice of a dispute from a consumer reasonably determines that the dispute is frivolous or irrelevant, including—

(I) by reason of the failure of a consumer to provide sufficient information to investigate the disputed information; or

(II) the submission by a consumer of a dispute that is substantially the same as a dispute previously submitted by or for the consumer, either directly to the person or through a consumer reporting

agency under subsection (b), with respect to which the person has already performed the person's duties under this paragraph or subsection (b), as applicable.

(ii) Notice of determination. Upon making any determination under clause (i) that a dispute is frivolous or irrelevant, the person shall notify the consumer of such determination not later than 5 business days after making such determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the person.

(iii) Contents of notice. A notice under clause (ii) shall include—

(I) the reasons for the determination under clause (i); and

(II) identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.

(G) Exclusion of credit repair organizations. This paragraph shall not apply if the notice of the dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization, as defined in section 403(3) [15 USCS § 1679a(3)], or an entity that would be a credit repair organization, but for section 403(3)(B)(i) [15 USCS § 1679a(3)(B)(i)].

(9) Duty to provide notice of status as medical information furnisher. A person whose primary business is providing medical services, products, or devices, or the person's agent or assignee, who furnishes information to a consumer reporting agency on a consumer shall be considered a medical information furnisher for purposes of this title, and shall notify the agency of such status.

(b) Duties of furnishers of information upon notice of dispute.

(1) In general. After receiving notice pursuant to section 611(a)(2) [15 USCS § 1681i(a)(2)] of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall

(A) conduct an investigation with respect to the disputed information;

(B) review all relevant information provided by the consumer reporting agency pursuant to section 611(a)(2) [15 USCS § 1681i(a)(2)];

(C) report the results of the investigation to the consumer reporting agency;

(D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that

compile and maintain files on consumers on a nationwide basis; and

(E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for purposes of reporting to a consumer reporting agency only, as appropriate, based on the results of the reinvestigation promptly—

(i) modify that item of information;

(ii) delete that item of information; or

(iii) permanently block the reporting of that item of information.

(2) **Deadline.** A person shall complete all investigations, reviews, and reports required under paragraph (1) regarding information provided by the person to a consumer reporting agency, before the expiration of the period under section 611(a)(1) [15 USCS § 1681i(a)(1)] within which the consumer reporting agency is required to complete actions required by that section regarding that information.

(c) **Limitation on liability.** Except as provided in section 621(c)(1)(B) [15 USCS § 1681s(c)(1)(B)], sections 616 and 617 [15 USCS §§ 1681n, 1681o] do not apply to any violation of—

(1) subsection (a) of this section, including any regulations issued thereunder;

(2) subsection (e) of this section, except that nothing in this paragraph shall limit, expand, or otherwise affect liability under section 616 or 617 [15 USCS § 1681n or 1681o], as applicable, for violations of subsection (b) of this section; or

(3) subsection (e) of section 615 [15 USCS § 1681m].

(d) Limitation on enforcement. The provisions of law described in paragraphs (1) through (3) of subsection (c) (other than with respect to the exception described in paragraph (2) of subsection (c)) shall be enforced exclusively as provided under section 621 [15 USCS § 1681s] by the Federal agencies and officials and the State officials identified in section 621 [15 USCS § 1681s].

(e) Accuracy guidelines and regulations required.

(1) Guidelines. The Federal banking agencies, the National Credit Union Administration, and the Commission shall, with respect to the entities that are subject to their respective enforcement authority under section 621 [15 USCS § 1681s], and in coordination as described in paragraph (2)—

(A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relating to consumers that

such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

(B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A).

(2) Coordination. Each agency required to prescribe regulations under paragraph (1) shall consult and coordinate with each other such agency so that, to the extent possible, the regulations prescribed by each such entity are consistent and comparable with the regulations prescribed by each other such agency.

(3) Criteria. In developing the guidelines required by paragraph (1)(A), the agencies described in paragraph (1) shall—

(A) identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;

(B) review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;

(C) determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to assure the accuracy and

integrity of information furnished to consumer reporting agencies; and

(D) examine the policies and processes that persons that furnish information to consumer reporting agencies employ to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to consumer reporting agencies.

FREQUENTLY ASKED QUESTIONS FAIR CREDIT REPORTING ACT

1. What is the Fair Credit Reporting Act?

The Fair Credit Reporting Act (FCRA) sets standards for the collection, communication, and use of information bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. In 1996, the Consumer Credit Reporting Reform Act extensively amended the FCRA. The FACT Act further amended the FCRA for various purposes, including to increase the accuracy of consumer reports.

2. Who is a "person" under the FCRA?

The FCRA broadly defines the term as "any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity. The term includes, but is not limited to, universities, creditors, collection agencies, insurance companies, private investigators and employers.

3. Who is a "consumer" under the FCRA?

The FCRA narrowly defines the term as "an individual." A key distinction between a consumer and a person is that the intent of the

FCRA is to protect the consumer. A consumer only includes a natural person.

4. Who is a “furnisher”?

A furnisher is any entity that furnishes information relating to consumers to one or more consumer reporting agencies for inclusion in a consumer report.

An entity is not a furnisher when it:

- 1) provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the Fair Credit Reporting Act;
- 2) is acting as a “consumer reporting agency” as defined in section 603(f) of the Fair Credit Reporting Act;
- 3) is a consumer to whom the furnished information pertains; or
- 4) is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer, and who provides information about the consumer’s character, general reputation, personal characteristics, or mode of living

in response to a specific request from a consumer reporting agency.

5. What is a “consumer reporting agency”?

A consumer reporting agency (CRA) is any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

6. What is a “consumer report”?

A consumer report is any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for: 1) credit or insurance to be used primarily for personal, family, or household purposes; 2) employment purposes; or 3) any other purpose authorized under section 604 of the FCRA.

7. When may a CRA furnish a consumer report?

A CRA may furnish a consumer report only for one of the listed permissible purposes under the FCRA (section 604). The use of a consumer report for any other purpose is strictly prohibited.

8. May a CRA furnish a consumer report on a person who has applied for a business transaction?

No. No permissible purpose exists to obtain a consumer report on a person who has applied for a business transaction. A permissible purpose only exists if the consumer has applied for credit to be used for personal, family or household purposes.

9. May a CRA furnish a consumer report to a debt collector for the purposes of collecting a consumer's debt?

Yes. However, debt collection, in and of itself, is not a permissible purpose for obtaining a credit report unless the debt arose from a voluntary credit transaction. A CRA may be liable for furnishing a consumer report for which there is no permissible purpose. A CRA must receive more than simply a certification from the debt collector stating the collector has a permissible to use a consumer report. A CRA must also verify the certification and determine no reasonable grounds exist for suspecting impermissible use. Debt

collectors must determine whether a consumer's debt emerged from the extension of credit prior to obtaining a consumer's credit report to assure a permissible purpose exists.

10. What is a “legitimate business need”?

Courts have consistently concluded that the “legitimate business need” permissible purpose should be narrowly construed to encompass only business transactions for which information is gathered for credit, insurance, eligibility or employment purposes.

11. What does the term “employment purposes” refer to when used in connection with a consumer report?

A report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

12. Who is a “data furnisher” or “furnisher of information” under the FCRA?

The FCRA does not explicitly define either of these terms. Several courts have defined data furnishers as those entities or persons which report to a CRA information pertaining to a specific debt owed by a specific consumer. This implies creditors, debt collectors, and asset buyers who report information regarding a particular debt owed by a particular consumer to CRAs are

subject to the provisions set forth in section 623 of the FCRA.

13. What are the responsibilities of data furnishers under the FCRA?

The FCRA imposes obligations on data furnishers to, among other things, provide accurate information when reporting to CRAs, respond to disputes submitted to the data furnisher by the CRA or directly by the consumer, and notify a consumer prior to furnishing negative information about the consumer to a CRA.

14. For the purposes of section 623 of the FCRA, what does “accuracy” mean?

Accuracy means that information that a furnisher provides to a CRA about an account or other relationship with the consumer correctly:

- 1) reflects the terms of and liability for the account or other relationship;
- 2) reflects the consumer’s performance and other conduct with respect to the account or other relationship; and
- 3) indentifies the consumer.

15. When is a consumer report inaccurate?

A consumer report is inaccurate under the FCRA if the report provides information in such a

manner as to create a materially misleading impression.

16. For the purposes of Section 623 of the FCRA, what does “integrity” mean?

Integrity means that information that a furnisher provides to a CRA about an account or other relationship with the consumer:

- 1) is substantiated by the furnisher’s records at the time it is furnished;
- 2) is furnished in a form and manner that is designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report; and
- 3) includes the information in the furnisher’s possession about the account or other relationship that the Federal Trade Commission has determined that the absence of which would likely be materially misleading in evaluating a consumer’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

17. Can a data furnisher provide information to a CRA after a consumer notifies the data furnisher that certain items are incomplete or incorrect?

No. Providing such information to a CRA before demonstrating its completeness may result in a violation of section 623 (a)(1)(B). Once a consumer disputes the completeness or accuracy of any item on his or her consumer report, the data furnisher is prohibited from furnishing the item to any CRA unless the data furnisher also furnishes notice the consumer disputed the item.

18. What is the “date of delinquency” under the FCRA?

The month and year of the commencement of the delinquency on the account that immediately preceded collection activity, charge to profit or loss, or similar action. Section 623 (a)(4) of the FCRA offers three methods which may be used in establishing when an account balance became delinquent.

19. Is a data furnisher required to notify a consumer in writing prior to furnishing negative information about the consumer to a CRA?

The FCRA requires certain data furnishers to notify a consumer in writing prior to furnishing

negative information about the consumer to a CRA. Section 623 (a)(7)(A)(k) provides:

If any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency . . . furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information, in writing, to the customer.

Covered financial institutions must provide the required notice before or no later than 30 days after furnishing negative information about a consumer.

20. What is a “financial institution” under the FCRA?

Any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956, whether or not affiliated with a bank. This definition encompasses, among other entities, third-party debt collectors and asset buyers as well as traditional banking entities.

21. What is “negative information”?

Any information concerning a customer’s delinquencies, late payments, insolvency, or any form of default.

22. What is a “direct dispute”?

A direct dispute means a dispute submitted directly to a furnisher (including a furnisher that is a debt collector) by a consumer concerning the accuracy of any information contained in a consumer report and pertaining to an account or other relationship that the furnisher has or had with the consumer.

23. How must the consumer initiate a dispute with a data furnisher?

A consumer who wishes to dispute an item of information directly with a data furnisher must: (1) provide notice of a dispute directly to a data furnisher at the mailing address provided to receive such disputes; (2) identify the specific item of information that is in dispute; (3) explain the basis for the dispute; and (4) include all supporting documentation required by the furnisher to substantiate the basis for the dispute.

If a consumer notifies a data furnisher at an address specified by the furnisher for receipt of such notices that specific information is inaccurate, the furnisher must conduct an

investigation. An oral dispute alone does not trigger a data furnisher's duty to investigate; however, the account must still be marked as disputed.

24. Under what circumstances must a data furnisher conduct a reasonable investigation of a direct dispute?

A data furnisher must conduct a reasonable investigation of a direct dispute if it relates to:

- 1) the consumer's liability for a credit account or other debt with the furnisher, such as direct disputes relating to whether there is or has been identity theft or fraud against the consumer, whether there is individual or joint liability on an account, or whether the consumer is an authorized user of a credit account;
- 2) the terms of a credit account or other debt with the furnisher, such as direct disputes relating to the type of account, principal balance, scheduled payment amount on an account, or the amount of the credit limit on an open-end account;
- 3) the consumer's performance or other conduct concerning an account or other relationship with the furnisher, such as direct disputes relating to the current

payment status, high balance, date a payment was made, the amount of a payment made, or the date an account was opened or closed; or

- 4) any other information contained in a consumer report regarding an account or other relationship with the furnisher that bears on the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

A furnisher does not have to conduct an investigation of a direct dispute if:

- 1) The direct dispute relates to:
 - a) the consumer's identifying information (other than a direct dispute relating to a consumer's liability for a credit account or other debt with the furnisher) such as name(s), date of birth, Social Security number, telephone number(s), or address(es);
 - b) the identity of past or present employers;
 - c) inquiries or requests for a consumer report;

- d) information derived from public records, such as judgments, bankruptcies, liens, and other legal matters (unless provided by a furnisher with an account or other relationship with the consumer);
 - e) information related to fraud alerts or active duty alerts; or
 - f) information provided to a consumer reporting agency by another furnisher; or
- 2) The furnisher has a reasonable belief that the direct dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization, as defined in 15 U.S.C. 1679a (3), or an entity that would be a credit repair organization, but for 15 U.S.C. 1679a (3)(B)(i).

25. What is a “reasonable investigation”?

A reasonable investigation is a good faith effort to determine the accuracy of the disputed items or item. It would likely be reasonable for the data furnisher to contact the original creditor or other reliable sources of the disputed information so as to verify the accuracy or completeness of the item,

as well as review the supporting documentation accompanying the dispute.

26. Is a data furnisher required to conduct an investigation regarding a frivolous or irrelevant dispute?

No. A data furnisher is not required to conduct a reinvestigation if the furnisher reasonably determines the consumer-initiated dispute is frivolous or irrelevant. However, it must be assumed that a consumer's dispute is bona fide, unless there is evidence to the contrary.

27. When is a dispute considered frivolous or irrelevant?

If a consumer (1) fails to provide sufficient information to investigate the disputed information; or (2) a consumer has previously submitted substantially the same dispute either directly to the data furnisher or indirectly through a CRA, and the data furnisher has already fulfilled its duties with respect to the dispute.

28. Can a data furnisher be liable for failing to conduct a proper investigation?

Consumers cannot bring claims against a data furnisher for a furnisher's failure to properly conduct an investigation based upon *receipt of notice of a dispute directly from a consumer*. The Federal Trade Commission and state Attorneys

General are obligated to enforce this portion of the Act, and may levy fines and pursue injunctive relief.

However, consumers may bring claims against a data furnisher for willful or negligent failure to properly investigate information disputed by the consumer a private right of action does exist for a data furnisher's failure to conduct an investigation based upon a dispute *received from a CRA*.

29. Who enforces the standards data furnishers must meet under the FCRA?

The enforcement of the standards required by the FCRA is delegated to federal and state agencies and officials who may bring administrative enforcement actions against data furnishers and seek fines and injunctive relief for violations of the FCRA.

30. What are the consequences of the enforcement actions against data furnishers?

State officials may obtain an injunction against a data furnisher for violating section 623 (a) of the FCRA. They may attempt to recover damages if the data furnisher has violated a previously issued injunction. State officials may not collect punitive damages for negligent noncompliance with the FCRA.

The Federal Trade Commission (FTC) may obtain an injunction against a data furnisher for violating section 623 (a) of the FCRA. The FTC may seek civil penalties of no more than \$2,500 per knowing violation constituting a pattern of noncompliance with the FCRA. The FTC may only seek civil penalties against parties for a violation of section 623 (a)(1) who violate injunction orders at the time the injunction was in effect.

31. Who can be found liable for failing to comply with the FCRA?

Any “person” who may be held liable for willfully or negligently failing to comply with the provisions of the FCRA.

32. What does the term “willfully” mean under the FCRA?

The FCRA does not define the term “willfully.” The U.S. Supreme Court defined the term to include knowing and intentional violations of the Act as well as acts committed in reckless disregard of the Act.

33. What are the consequences of “willful noncompliance” with the FCRA?

Any “person” who willfully violated the FCRA may be liable to the consumer for any actual damages incurred by the person or may be liable

for statutory damages of not less than \$100 and not more than \$1,000. Recoverable actual damages may include, but are not limited to, out-of-pocket losses, damages for humiliation or mental distress, and damages for injury to the consumer's reputation and creditworthiness.

In addition to actual or statutory damages, a person who willfully violates the FCRA may be liable for punitive damages and reasonable attorney's fees. The determination of punitive damages is made and awarded by the court.

34. What constitutes “negligent noncompliance” under the FCRA?

Some courts have agreed that negligent noncompliance with the FCRA generally consists of four elements: (1) inaccurate information was included in a consumer's credit report; (2) the inaccuracy was due to the CRA's failure to follow reasonable procedures to assure maximum possible accuracy; (3) the consumer suffered injury; and (4) the consumer's injury was caused by the inclusion of the inaccurate entry.

35. What are the consequences of “negligent noncompliance” with the FCRA?

A person who acts negligently and violates the FCRA may be liable for actual damages as well as court costs and reasonable attorney's fees as

awarded by the court. A consumer cannot recover punitive damages for a person's negligent noncompliance with the FCRA.