
The Fair Debt Collection Practices Act And Collecting Trade Debt

Disclaimer: The following material should not be considered legal advice. When you have a legal question, contact competent legal counsel. Comments are based on a few decades of experience and specialized training provided by NACM and various attorneys relating to FDCPA and collection practices.

FDCPA was passed in 1977 as Title VIII of the Consumer Credit Protection Act; was implemented in March 1978; and subsequently has been amended several times.

Purpose of the Act

- To protect the **Consumer** by reducing abusive collection practices, which have many negative effects on individuals, their families, and their employers; and
- To protect **Debt Collectors** who do not use such tactics.

Consumers are "natural" persons, i.e., not creations of law, such as a corporation or LLC.

Debt collectors are third-parties or creditors using a different name for their collection operation.

The act governs the **acquisition of location information**. (§804)

- A debt collector must identify self by name, and if asked by company;
- May not talk to others about debt;
- May not contact a third-party more than once unless the original response was believed to be incorrect or incomplete;
- May not communicate by postcard;
- May not use language or symbols on the outside of an envelope or in any communication indicating a debt is involved;
- Must communicate with any known attorney, unless such attorney is unresponsive.

The act governs **communications**. (§805). The collector may not communicate:

- With the debtor at any unusual time or place or at a time or place known to be inconvenient, usually before 9am or after 8pm;
- With the debtor if the debtor is represented by counsel, i.e., the collector must approach counsel;
- With the debtor at place of employment if collector knows the employer prohibits such contact;
- With anyone other than the debtor, his or her attorney, a consumer reporting agency, the creditor, the creditor's collection agency or attorney, or the debt collector's attorney;
- If the debtor notifies the collector in writing that he or she refuses to pay the debt or that he or she wants no further communications, the collector must stop (with a couple of exceptions).

The act defines and prohibits **harassment or abuse**. (§806)

- Use or threat of violence or other criminal means of collection;
- Use of obscene or profane language;
- Publication of a blacklist;

- Advertisement for sale of any debt as a method of coercing payment;
- Repeated or continuous telephone contact or attempts to contact;
- Telephone calls without disclosure of identity.

The act prohibits **false or misleading representations**. (§807)

- The collector has any affiliation with government;
- The character, amount, or legal status of the debt;
- The collector is an attorney;
- Arrest, imprisonment, or unlawful action may take place, or any false statement of intentions;
- The threat of action that cannot be lawfully taken;
- That sale, referral, or transfer of the debt will reduce the rights of the consumer;
- That the debtor is guilty of a crime or other conduct that might bring disgrace to the consumer;
- Communicating or threatening to communicate false information, including the fact the debt may be disputed;
- Use of a document that simulates or represents a governmental agency;
- Failing to disclose in the first written notice the attempt to collect a debt and that information gathered will be used for that purpose;
- Implication that account has been sold to an innocent purchaser;
- Implication that documents are legal process or that they are not;
- Use of false name for debt collection company;
- Representation that collector works for a consumer reporting agency.

The act defines and prohibits **unfair practices**. (§808)

- Collection of any amount not expressly authorized by agreement or law;
- Certain post-dated check practices;
- Charges to debtor (e.g., collect calls);
- Taking or threatening nonjudicial action without legal rights;
- Communicating with debtor by postcard;
- Using language or symbol on an envelope.

The act defines a **validation** process. (§809)

- Within five days of initial contact, collector shall notice amount of debt, name of creditor, rights to dispute, dispute resolution process, and right to name of original creditor if different;
- If disputed or more information is requested, action must cease until done.

The act requires the collector to **apply any payment** as the consumer directs. ((§810)

The act states that legal actions to **enforce interests in real property** must take place where the real property is located, and in other cases, the action must take place where the contract was signed or where the consumer resides when the action is filed.

Why does this matter to a trade credit manager, to whom the law does not apply in most situations? (1) Certain judges have applied FDCPA provisions to commercial cases; and (2) if Trade Creditors do not comply with requirements, Congress may attempt to expand the FDCPA mandate.

Practice tips for Trade Creditors:

1. **Prepare** for contact with the Debtor; review and know the situation and the basis for the debt; and sell the benefits of prompt payment. You intend on **enforcing your legal rights to payment** as may be necessary.

2. When communicating with the Debtor, be clear about the **expectation of payment**. Avoid getting into a back-and-forth struggle to get paid.
 3. Be clear with the Debtor about **the debt**. The original contract from which the debt exists, POs, invoices, the billing process, all previous contacts, etc. should be readily available
 4. If the Debtor indicates the **debt is disputed**, gather information that will allow you to verify if in fact the debt should be adjusted. An attempt to resolve any dispute should be made before proceeding.
 5. **Don't swear** or use language that might be interpreted as demeaning or threatening, even if the Debtor proceeds to do so.
 6. **Don't overshadow**. That is, don't put PAST DUE in six-inch high letters on a bill with ten-point type. And, don't send a large individual with an eighteen-word vocabulary to someone's house to make a personal call. Overshadowing is just another form of threatening.
 7. **Know your legal rights to collection**, including all available options, some of which may be specific to your industry.
 8. **Don't assert rights you do not have**. Follow the path without trying to take shortcuts to get paid.
 9. **Avoid getting overly demanding or bull-headed** about what you're going to do. If you say you will turn the debt over to an agency or attorney for collection, mean it and, if necessary, do so. If you say you will let a court decide, mean it and, if necessary, do so. Don't say you're going to get a judgment and garnish their wages. Be systematic and consistent and avoid the blather.
 10. **Subscribe to the New York Times rule**: Would you feel okay if the actions you take appeared on the front page of the NYT? This also is known as the "Would your mother approve?" rule.
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