



**XVIII Airborne Corps and Fort Bragg  
Office of the Staff Judge Advocate  
Legal Assistance Office**



## **INFORMATION PAPER – FAIR DEBT COLLECTION PRACTICES ACT**

### **1. WHAT IS THE FAIR DEBT COLLECTION PRACTICES ACT?**

Debt is a common part of our society. Frequently, a consumer will buy items on credit. When this happens, the consumer is called a debtor because they have taken out a debt (money). The person or business the consumer owes the debt to is called the creditor. If the debtor does not make payments to satisfy the debt, creditors often will try to contact the debtor to obtain payment of the debt. Creditors may also turn over the debt to someone else to collect it; this person or business is called a debt collector. The Fair Debt Collection Practices Act (FDCPA) is a law that is designed to protect debtors from abusive practices of debt collectors. The FDCPA's statutory citation is 15 U.S.C. §§ 1692-1692(p).

### **2. WHEN DOES THE FDCPA APPLY?**

The FDCPA's protections apply when a creditor has turned over a debt to someone else to collect that debt, and it covers the third party's behavior in collecting the debt. For the FDCPA to apply, the third party must be a debt collector. If the person or business is not specifically called a debt collector, look at whether they are acting primarily to collect the debt, or if they regularly collect debts owed to others. Lawyers collecting debts may fall under the FDCPA. Repossessors are usually not regulated by the FDCPA as "debt collectors." Delivery services *might* be a debt collector regulated by the FDCPA. A creditor (person who lent money) collecting a debt is not a debt collector under the FDCPA unless they are using another name to imply that there is a third party.

### **4. WHAT SHOULD I SAY WHEN A DEBT COLLECTOR CALLS ME?**

First, don't acknowledge the debt. Tell the debt collector to mail you information verifying the debt and under the FDCPA they must provide you with that information within 30 days. You have a right to know the debt amount and the original creditor. Sometimes, the debt might be so old that you don't need to pay it anymore.

Second, don't be threatened into giving out information or paying the debt. If the debt collector says they will call your command, simply assert that they are not allowed to under the FDCPA. Generally, a debt collector may not communicate with third parties (other than your attorney or a credit reporting agency) about collection of your debt. Consider letting your command know that debt collectors are not allowed to call them about your debts, and ask your command not to give out information about you or the debt to debt collectors.

### **3. WHAT PROTECTIONS DOES THE FDCPA HAVE FOR ME?**

The FDCPA empowers consumers with debts in the following ways:

- a. Requires the debt collector send the debtor notice of:
  - (1) The debt amount
  - (2) The name of the creditor to whom the debt is owed
  - (3) The right of the debtor to request verification within 30 days

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- (4) The fact that any information provided by the debtor will be used to collect debts
- b. Allows debtors to limit or stop the debt collector’s attempts to communicate with them
- c. Restricts debt collectors’ ability to contact third parties, including a debtor’s employer, about the debt
- d. Prohibits debt collectors from contacting the debtor at unusual or inconvenient times or places without permission
- e. Allows debtors to request information about and verification of the debt from the debt collector
- f. Prohibits unfair debt collection practices like:
  - (1) Collecting money not authorized by the original agreement or law
  - (2) Depositing or threatening to deposit postdated checks early
  - (3) Threatening to take property that the debt collector has no right to or that the collector has no intention to take
  - (4) Threatening to take any action that cannot legally be taken or that is not intended to be taken
  - (5) Using false, deceptive, or misleading representations or means in connection with the collection of a debt
  - (6) Taking actions which tend to harass, oppress, or abuse any person in connection with a debt
  - (7) Using unfair or unconscionable means to collect or attempt to collect a debt
- g. Requires debt collectors sue debtors only in the judicial district where the debtor resides or the contract was signed, or where there is real property, in the district the property is located
- h. If there are multiple debts, it prohibits debt collectors from applying other debt payments to debts still in dispute

## 4. HOW DO I DEAL WITH A DEBT COLLECTOR WHO IS VIOLATING MY RIGHTS UNDER THE FDCPA?

### a. Getting the violations to cease:

- (1) Tell the debt collector they are violating your rights under the FDCPA. This can be the most immediate way to get a debt collector to refrain from further unfair debt collection practices.
- (2) Write a letter to the debt collector stating their potential violations of the FDCPA, asking the collector to refrain from further violations, and stating your remedies from these violations. A Legal Assistance JAG can help you with this.

### b. Obtaining relief for violations of the FDCPA:

- (1) You can assert violations of the FDCPA as a counter-claim in a law suit initiated by the debt collector. You can also bring an action in civil court against the debt collector for the violations.
- (2) If you can prove the FDCPA was violated, you might be able to collect statutory damages. The court can award up to \$1,000. In determining the amount to award the court will consider the frequency and nature of the violations, whether they were intentional, and other relevant factors.

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(3) If you can prove the FDCPA was violated, you might be able to collect money to compensate you for damage you actually sustain as a result of the violation. Actual damages can include personal humiliation, embarrassment, mental anguish, and emotional distress.

(4) If you are successful in proving the debt collector violated the FDCPA, the court can award you reasonable attorney's fees and court costs. If a court finds you sued a debt collector to harass them and without any good faith belief the debt collector violated the FDCPA, it may award reasonable attorney's fees to the defendant.

(5) Debt collectors will not be held liable for violations of the FDCPA that they show by a preponderance of evidence were not intentional and resulted from a bona fide error. The debt collector would be expected to show also that they have procedures that usually help them avoid such errors.