

CHAPTER IX

The Bureau of Consumer Financial Protection and Military Legal Assistance

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NORTH CAROLINA

BAR ASSOCIATION
seeking liberty + justice

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The Bureau of Consumer Financial Protection (BCFP) and Military Legal Assistance

NC State Bar Association CLE| November 13, 2018



Angela Martin
Office of Enforcement
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Disclaimer

This presentation is being made by a Bureau of Consumer Financial Protection representative on behalf of the Bureau. It does not constitute legal interpretation, guidance, or advice of the Bureau. Any opinions or views stated by the presenter are the presenter's own and may not represent the Bureau's views.

Centralizing Consumer Financial Protection Accountability

Federal agencies with consumer financial protection duties, *in addition to their many other responsibilities*:



July 21, 2011
(launch date)

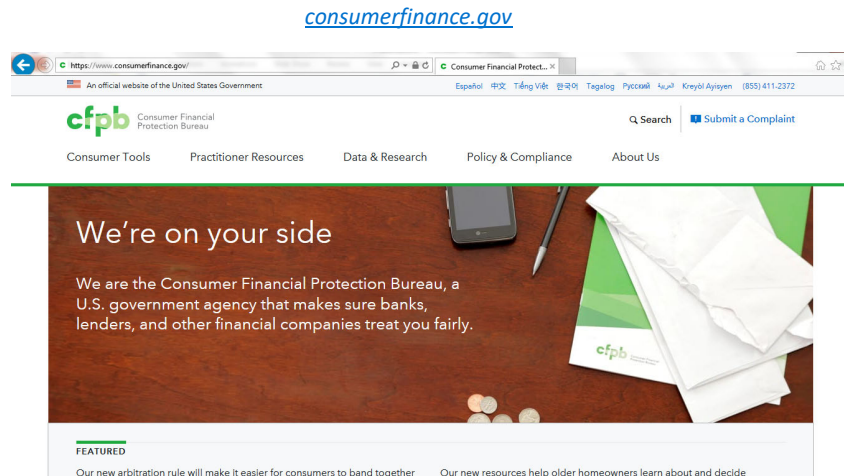
- Scattered approach resulted in regulatory gaps covering consumer financial products or services
- Centralized consumer financial protection responsibilities

Joint Statement of Principles – July 6, 2011

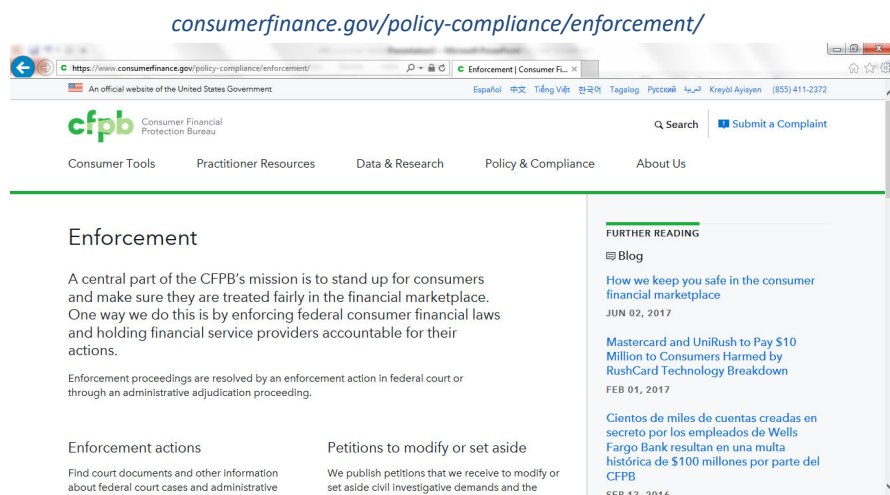


Joint Statement of Principles (dated 7/6/2011):
www.consumerfinance.gov/about-us/blog/the-cfpb-and-jags-partnering-to-protect-servicemembers (posted 7/7/2011)

BCFP Website



Office of Enforcement



Office of Enforcement

Core Work

- Auto loans
- Bank accounts and deposit products
- Consumer credit reporting
- Credit cards
- Debt collection
- Debt relief and credit counseling
- Electronic fund transfers
- Fair lending
- General consumer finance
- Mortgage origination
- Mortgage servicing
- Payday lending
- Prepaid cards
- Student loans

Office of Enforcement

Selected Laws the BCFP Enforces

- Alternative Mortgage Transaction Parity Act (AMTPA)
- ***Consumer Financial Protection Act (Title X of Dodd-Frank)***
- Consumer Leasing Act (CLA)
- Electronic Fund Transfer Act
- Equal Credit Opportunity Act (ECOA)
- Fair Credit Billing Act (FCBA)
- Fair Credit Reporting Act (FCRA)
- Fair Debt Collection Practices Act (FDCPA)
- Federal Deposit Insurance Act (FDIA)
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- S.A.F.E. Mortgage Licensing Act
- Truth in Lending Act (TILA)
- Truth in Savings Act (TISA)

Office of Servicemember Affairs

consumerfinance.gov/servicemembers/

The screenshot shows the 'Information for servicemembers' page. At the top, there's a navigation bar with the CFPB logo, a search bar, and a 'Submit a Complaint' button. Below this is a horizontal menu with links: Consumer Tools, Practitioner Resources, Data & Research, Policy & Compliance, and About Us. The main content area has a heading 'Information for servicemembers' with a paragraph explaining the CFPB's commitment to addressing financial challenges for servicemembers and their families. To the right of this text is a sign-up form titled 'Stay informed about our work for servicemembers, veterans, and their families' with an 'Email address' field and a 'SIGN UP' button. Social media icons for Facebook, Twitter, and YouTube are also present.

BCFP Online Complaints

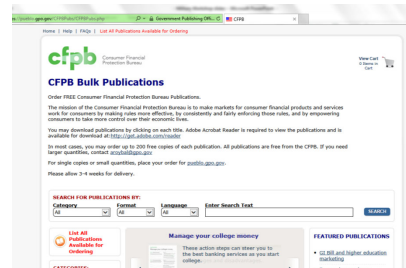
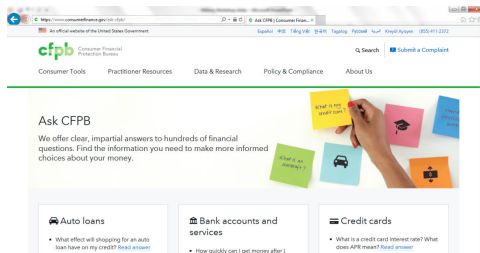
Online Complaints:
consumerfinance.gov/complaints

The screenshot shows the 'Online Complaints' page. It features a large green banner with the text 'Having a problem with a financial product or service?' and 'Tell us about your issue—we'll forward it to the company and work to get you a response, generally within 15 days.' To the right of this text are three speech bubble icons with exclamation marks. Below the banner is a 'Submit a complaint' section with a paragraph explaining the process and a 'Submit a complaint' button. To the right of this is an 'About us' section with a paragraph about the CFPB's role. The page also includes a navigation bar at the top with the CFPB logo, a search bar, and a 'Submit a Complaint' button, and a horizontal menu with links: Consumer Tools, Practitioner Resources, Data & Research, Policy & Compliance, and About Us.

Other BCFP Resources

Online answers to hundreds of financial questions:
consumerfinance.gov/ask-CFPB

Free bulk publications:
pueblo.gpo.gov/CFBPBpubs/CFBPBpubs.php



Your consumer law clients



Monday	Tuesday	Wednesday	Thursday	Friday
<u>0900 Consumer</u>	<u>0900 Consumer</u>	Closed for training	<u>0900 Consumer</u>	0900 Family Law
1000 Wills	1000 Wills	Closed for training	<u>1000 Consumer</u>	<u>1000 Consumer</u>
1100 Wills	1100 Family Law	Closed for training	<u>1100 Consumer</u>	<u>1100 Consumer</u>
Lunch	Lunch	Lunch	Lunch	Lunch
1300 Wills	<u>1300 Consumer</u>	1300 Family Law	1300 Wills	Case mgt
1400 Family Law	1400 Wills	1400 Family Law	<u>1400 Consumer</u>	Case mgt
<u>1500 Consumer</u>	1500 Family Law	<u>1500 Consumer</u>	Early Release	Case mgt
1600 Wills	<u>1600 Consumer</u>	<u>1600 Consumer</u>	Early Release	Case mgt

[ENDEX](#)

Monday 0900 hrs

I sent in my orders and a letter to my lender to get my pre-service loans down to 6% interest. They refuse to lower it. What can I do?

Office of Enforcement

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Monday 1500 hrs

I bought a car on Saturday and I think I got a bad deal. Can I just give it back? After all, it's only Monday.

Office of Enforcement

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Tuesday 0900 hrs

I bought something online and it never arrived. Now I can't get reach them on email or phone. What can you do to help me?

Office of Enforcement

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Tuesday 1300 hrs

I paid \$1400 cash to ship my household goods from Ohio to California and now they won't give me my stuff. Do you have any "magic words" that will force them to deliver them to me?

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Tuesday 1600 hrs

The bank stole \$360 from me this month on overdraft fees. Can they do this?

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Wednesday 1500 hrs

AFDCB

Office of Enforcement

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Wednesday 1600 hrs

The State of South Carolina is charging me property tax on my vehicle and I don't even live there. Do I have to pay it?

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Thursday 0900

I saved up \$14,000 while I was deployed. I came back and all of it is gone from my account and the bank won't give it back. Can they steal from me like this?

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Thursday 1000 hrs

The security manager told me my clearance may not be granted unless I fix the things on my credit report. Can you help me?

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Thursday 1100 hrs

I'm an active duty spouse and I took out a loan last month for \$3600. If I pay it off as agreed, I will end up paying \$17,000! Is bankruptcy an option for me?

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Thursday 1400 hrs

The debt collector keeps calling
my unit. Can you make him
stop?

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Friday 1000 hrs

I bought a puppy at Christmas and I can't afford these vet bills. Can you help me?

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Friday 1100 hrs

The debt collector keeps telling my spouse about my debts. Will you make them speak only to me?

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Military Lending Act (MLA)

10 U.S.C. § 987

32 C.F.R. part 232



Angela Martin
Office of Enforcement
Senior Enforcement Attorney/Military Affairs Liaison

“Purpose” of 32 C.F.R. part 232

“The purpose of this part is to impose limitations on the cost and terms of certain extensions of credit to Service members and their dependents, and to provide additional protections relating to such transactions in accordance with 10 U.S.C. § 987.” (32 C.F.R. 232.1)

Applicability
32 C.F.R. § 232.2(a)(1)

“This part applies to consumer credit extended by a creditor to a covered borrower ... Nothing in this part applies to a credit transaction or account relating to a consumer who is not a covered borrower at the time he or she becomes obligated on a credit transaction or establishes an account for credit.”

Definitions

32 C.F.R. § 232.3

“consumer credit” § 232.3(f)(1)

“creditor” § 232.3(i)

“covered borrower” §§ 232.3(g)(1) – (g)(4)

*Note: Optional identification of covered borrower § 232.5
(database, consumer report, historic lookback)*

Coverage

32 C.F.R. §§ 232.1(c)(1)-(4)

(1) Provides the maximum allowable amount
of all charges, and types of charges

(2) MAPR disclosures – MAPR statement is
at § 232.6(a)(1)

(3) The method of calculating the MAPR

(4) Contains such other criteria and
limitations

Other provisions

- § 232.6 - Mandatory loan disclosures
- § 232.4 - MAPR - not APR of
 - MAPR not to exceed 36%
- § 232.7 Preemption
- § 232.4(d) Limited exclusions for credit cards

Limitations

32 C.F.R. § 232.8

MLA makes it unlawful for any creditor to extend consumer credit to a covered borrower with respect to which:

- (a) Refinancing/renewing/rolling over consumer credit (same covered borrower, same creditor.)
 - Note: expressly limits the definition of “creditor” solely for this subsection
- (b) Requires a waiver of rights, including SCRA rights

Limitations

32 C.F.R. § 232.8

- Mandatory arbitration or imposes other onerous legal notice provisions
- Unreasonable notice from the covered borrower as a condition for legal action
- Account access, unless MAPR is consistent and otherwise permitted by law
- Auto title security (unless a chartered or licensed depository)
- Mandatory allotments
- Prepayment penalties

Penalties and remedies

32 C.F.R. § 232.9

- Misdemeanor for a knowing violation (title 18 US Code)
- Preservation of other remedies
- Contract void *ab initio*
- Arbitration agreement unenforceable
- Civil liability
 - Any actual damages, not < \$500 per violation
 - Punitive damages
 - Equitable or declaratory relief; and
 - Any other relief provided by law

Penalties and remedies

32 C.F.R. § 232.9

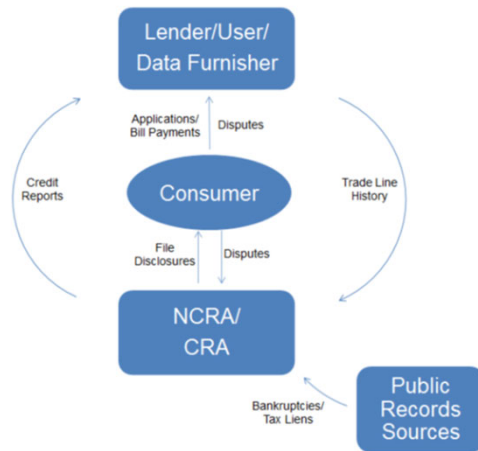
- Costs of the action with reasonable attorney fees
- Plaintiff liable if brought the case in bad faith and for the purpose of harassment
- Bona fide error defense available
- Jurisdiction in any appropriate US District Court
- Statute of limitations: the earlier of
 - two years after the date of discovery by the plaintiff; or
 - five years after the date on which the violations occurs

Fair Credit Reporting Act (FCRA)

15 U.S.C. §§ 1681 *et seq.*



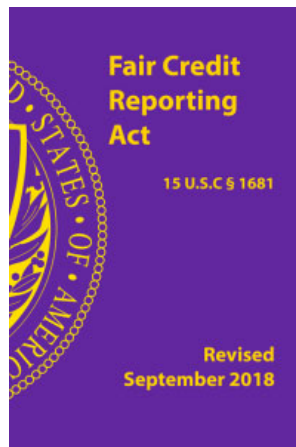
The credit reporting system



https://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf

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Fair Credit Reporting Act – FTC's pub



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Congressional findings – 15 U.S.C. § 1681(a)

- Banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system. 15 U.S.C. § 1681(a)(1)
- An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers. 15 U.S.C. § 1681(a)(2)
- Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers. 15 U.S.C. § 1681(a)(3)
- There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy. 15 U.S.C. § 1681(a)(4)

Purposes – 15 U.S.C. § 1681(b)

- *Reasonable procedures.* It is the purpose of this title to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this title.

Key concepts

- **Consumer Report** (broad definition)
 - any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, 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 [§ 1681b].

Key concepts

- **Consumer Reporting Agency***

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.

Key concepts

- **File**

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.

Certain protections

- Free copy
- Alerts (OSA publication)
- Excluded information
 - Bankruptcy – 10 years
 - Civil suits, civil judgments records of arrest – 7 years*
 - Paid tax liens – 7 years
 - Collection accounts – 7 years from charge off*
 - Medical debt (HIPAA)
 - Veteran’s medical debt

Accuracy of reports; procedures for disputes

15 U.S.C. § 1681e(b); 15 U.S.C. § 1681i



Accuracy of reports 15 U.S.C. § 1681e(b)

Whenever a consumer reporting agency prepares a consumer report, it must follow reasonable procedures to assure maximum possible accuracy of the information it reports.

“Maximum Possible Accuracy”

Procedure in case of disputed accuracy
15 U.S.C. § 1681i

“Reasonable reinvestigation” - Proper reinvestigation requires a consumer reporting agency to “conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate.” 15 U.S.C. §1681i(a)(1)(A).

Procedure in case of disputed accuracy - 15 U.S.C. § 1681i

- 30 days to investigate (may extend 15 more days)
- Must promptly delete or modify the information the information:
 - is not complete
 - is inaccurate
 - cannot be verified
- No change or deletion of information triggers consumer’s right to place 100-word statement on report

Other provisions

- Theft prevention alerts, fraud alerts, active duty alerts
- Identity theft information blocking
- ***National security freeze***
- ***Active duty credit monitoring***

Debt Collection

74th Legal Assistance Course | November 6, 2018

Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 *et seq.*

Consumer Financial Protection Act, 12 U.S.C. §§ 5481 *et seq.*



Angela Martin
Office of Enforcement
Senior Enforcement Attorney/Military Affairs Liaison

Consumer assistance

- Consumer complaint resolution
 - Consumer Response – beginning in July 2013
- “Ask CFPB” offers answers to commonly asked questions
 - Includes debt collection questions/answers
 - Consumers may submit questions to Bureau
 - Provides letter templates for consumers to use when communicating with collectors
- Office of Servicemember Affairs
 - Debt collection [webinar](#)
 - Debt collection [brochure](#)

Debt collection: basic concepts



Understanding some key concepts

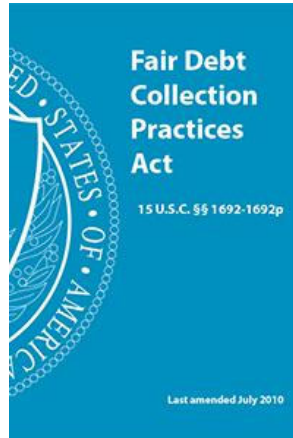
- **Debt v. Credit**
- **Secured debt v. Unsecured debt**
- **Open-end v. Closed-end credit**
- **Co-signer**
- **Wage garnishment**

Fair Debt Collection Practices Act (FDCPA)

15 USC §§ 1692 *et seq.*



Fair Debt Collection Practices Act – FTC's pub



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Fair Debt Collection Practices Act (FDCPA)

- FDCPA - key federal law that prohibits debt collection companies from using abusive, unfair, or deceptive practices to collect debts
- Regularly collects defaulted debts owed to others
- Includes collection agencies or lawyers who collect debts as a principal purpose of their business

Purposes – 15 U.S.C. § 1692(e)

- Eliminate abusive debt collection practices
- Insure debt collectors who refrain are not competitively disadvantaged
- Promote consistent State action to protect consumers

Definitions - 15 U.S.C. § 1692a

- **Communication** - 15 U.S.C. § 1692a(2)
 - Directly or indirectly to any person
 - any medium
- **Consumer** - 15 U.S.C. § 1692a(3)
 - any natural person
 - obligated or allegedly obligated
- **Creditor** - 15 U.S.C. § 1692a(4)
 - Offers or extends credit creating a debt
 - NOT any person who receives after default

Definitions - 15 U.S.C. § 1692a

- **Debt**

- Any obligation or alleged obligation
- Primarily for personal, family, or household purposes

- **Debt Collector**

- Regularly collects, or attempts to collect, debts owed or due another
- Uses any name other than his own

- **Location Information**

- Consumer's place of abode
- Telephone number at such place
- Place of employment

Validation of debts – 15 U.S.C. § 1692g (“g-notice”)

- **Within 5 days after the initial communication**

- Written notice containing certain information
 - Amount of the debt
 - The name of the creditor to whom the debt is owed
 - Validity statement
 - Can request verification *in writing*
- In writing requirement not necessary
- No overshadowing or inconsistencies

Verification – 15 U.S.C. § 1692g (“g-notice”)

- Debt collector shall cease collection if request verification, until validated
- Only triggered if dispute was in writing

Verification – 15 U.S.C. § 1692g (“g-notice”)

- No overshadowing or inconsistencies
- Failure to dispute is not an admission of liability for court
- Legal “pleadings” shall not be treated as an initial communication

Communication - 15 U.S.C. § 1692c

- **Without the prior consent of consumer**
 - Unusual time or place: 8AM – 9 PM consumer's time zone
 - When represented by an attorney
 - At place of employment

Communication - 15 U.S.C. § 1692c

- No 3rd Party communications
- Only with consumer, consumer's attorney, or credit bureau
- Cease communication (written)
- By mail = **complete upon receipt**
- "consumer" also means spouse, parent, guardian, executor, or administrator

Harassment or abuse - 15 U.S.C. § 1692d

- Without limitation:
 - Used or threatened the use of violence or other criminal means to harm person/property
 - Use of profanity or obscenity
 - Published a list of consumers who allegedly refuse to pay debts
 - Caused phones to ring repeatedly
 - Placed calls without disclosing identity

False or misleading representations 15 U.S.C. § 1692e

- Without limitation (16 express violations):
 - Affiliated with the U.S. or any State
 - Character, amount, or legal status of any debt
 - Not really an attorney
 - Wrongful threats re: garnishment, etc.
 - Communicating false credit information (e-8)
 - False court documents
 - Use of any false representation
 - “Mini-Miranda” (e-11)

False or misleading representations

15 U.S.C. § 1692e

- Debt has been turned over to innocent purchasers for value
- Threaten to take any action that cannot legally be taken or that is not intended to be taken
- Sale or other transfer of any interest in a debt shall cause the consumer to lose any claim or defense
- Consumer committed any crime or other conduct in order to disgrace the consumer

False or misleading representations

15 U.S.C. § 1692e

- Documents are legal process
- Any name other than the true name
- Documents are not legal process forms and require no action
- Debt collector owns or operates a consumer reporting agency

Unfair Practices - 15 U.S.C. § 1692f

- May not use unfair or unconscionable means, without limitation:
 - Any amount not expressly authorized (or permitted by law)
 - Checks postdated more than 5 days w/o 3 day notice
 - Solicitation of postdated check with criminal threat
 - Pre-depositing postdated checks

Unfair Practices - 15 U.S.C. § 1692f

- Causing communication charges
- Taking or threatening to take any non-judicial action if –
 - No present right to possession
 - No present intent
 - Exempt property
- Postcards
- Outside writings

Venue - 15 U.S.C. § 1692i

- **Judicial district where:**
 - Consumer signed the contract sued upon, or
 - Consumer resides
- *Nothing in this title shall be construed to authorize the bringing of legal actions by debt collectors.*

Jurisdiction - 15 U.S.C. § 1692k(d)

- Any U.S. District Court
- without regard to the amount in controversy
- Statute of limitations – 1 year

Civil liability - 15 U.S.C. § 1692k

- **Actual damages, including emotional distress**
- **Statutory damages**
 - Individual case: up to \$1000
 - Class action: \$500,000 or 1% of the net worth of the debt collector
- **Costs**
- **Reasonable attorney's fees**
- **(Their own attorney's fees)**

Bona Fide Error Defense (BFE) - 15 U.S.C. § 1692k(c)

- Escape liability
- Preponderance of the evidence
- Not intentional
- Had to have procedures reasonably adapted to avoid any such error

****Debt collectors may rely on FTC advisory opinions -
15 U.S.C. § 1692k(e)**

Debt Settlement Services



Debt settlement services

- Assert they can renegotiate, settle or in some way change the terms of a person's unsecured debt to a creditor or a debt collector. That may include reducing the balance, interest rates, or fees a person owes.
 - NOTE: The consumer can try to do this himself by contacting his creditors.
- Often charge expensive fees and some charge illegal up-front fees.
- Advertise that they will help but provide little or no assistance
- Consumers should avoid doing business with any company that promises to settle the debt if the company:

Debt settlement services

- Charges any fees before it settles the consumer's debts
- Touts a "new government program" to bail out personal credit card debt
- Guarantees to the consumer it can make the debt go away
- Tells the consumer to stop communicating with the creditors
- Tells the consumer it can stop all debt collection calls and lawsuits
- Guarantees that the unsecured debts can be paid off

Thank you for your time and attention.

If you have enforcement tips, questions, suggestions, or need other assistance, please let me know at angela.martin@cfpb.gov; (202)578-6956.