


## Day 1: Fair Debt Collection Practices Act (FDCPA) – In Depth

 **Objective:** Understand the FDCPA's purpose, key rules, and prohibited practices to ensure compliance and avoid penalties.

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### 1. Introduction to FDCPA (10 min)

#### ✓ Explain the purpose of FDCPA:

- Protect consumers from abusive, deceptive, and unfair debt collection practices.
- Promote fair debt collection while preserving avenues for legitimate debt recovery.

#### ✓ Discuss the history of FDCPA:

- Enacted in **1978** as a response to widespread consumer complaints.
- Enforced by the **Federal Trade Commission (FTC) & Consumer Financial Protection Bureau (CFPB)**.

#### ✓ Define who qualifies as a "debt collector" under FDCPA:

- Any person or entity collecting debts **on behalf of another**.
- Collection agencies, lawyers who collect debts regularly, and companies buying debts for collection.

#### ✓ Clarify which debts are covered:

- **Personal, family, or household debts** (credit cards, auto loans, medical bills, etc.).
- **NOT** business debts or government debts (e.g., taxes).

#### ✓ Identify who is NOT covered:

- **Original creditors** (collecting their own debts).
  - Certain **fiduciary relationships** (e.g., escrow agents).
  - **Government agencies** collecting on their own behalf.
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#### ✓ Differences Between Third-Party Debt Collectors & Original Creditors

#### Who Does the FDCPA Apply To?

Type of Collector	Covered by FDCPA?	Explanation
Third-Party Debt Collectors	✓ Yes	Applies to businesses <b>collecting debts on behalf of another</b> .
Debt Buyers	✓ Yes	Applies to businesses that <b>purchase debts and collect on them</b> .
Original Creditors	✗ No (Generally Not Covered)	FDCPA does <b>not</b> cover original lenders (e.g., banks, credit card companies) unless <b>state law expands coverage</b> .
Attorneys Collecting Debts	✓ Yes	If an attorney <b>regularly collects debts</b> for creditors, they are <b>subject to FDCPA</b> .

### How Some States Expand FDCPA Protections to Original Creditors

- **California & Florida** apply **FDCPA-like restrictions to original creditors**, meaning banks and lenders must follow the same collection rules as debt collectors.
- **New York** requires **specific disclosures** from original creditors before taking collection actions.

### Example Case:

- In **2019**, the **New York Attorney General** sued a **major bank** for deceptive collection practices under state law—even though **original creditors are not covered by FDCPA** at the federal level.

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## 2. Key Rules & Prohibited Practices (25 min)

<i>Rule</i>	<i>Statute</i>	<i>Explanation &amp; Training Context</i>	<i>Potential Consequences for Non-Compliance</i>
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<b><i>Communication After Refusal to Pay</i></b>	15 U.S.C. § 1692c	<i>If a consumer refuses to pay and sends a written request to stop contact, the collector must cease all further communication except to confirm termination or notify of legal action.</i>	<i>Continued contact may result in FDCPA violations, lawsuits, and statutory damages.</i>
<b><i>Communication Through Unauthorized Medium</i></b>	15 U.S.C. § 1692(a)(2)	<i>Debt collectors must not communicate via channels the consumer has prohibited, such as workplace emails or texts if the consumer has opted out.</i>	<i>Unauthorized communication can lead to consumer complaints, regulatory scrutiny, and legal penalties.</i>
<b><i>Harassing the Consumer Through Repeated or Excessive Communication Attempts</i></b>	15 U.S.C. § 1692d(5)	<i>Debt collectors cannot call excessively, harass, or annoy the consumer with repeated communication.</i>	<i>Harassment claims can result in lawsuits, fines, and reputational damage.</i>
<b><i>Contacting Third Parties for Information Without Proper Purpose</i></b>	15 U.S.C. § 1692c(b)	<i>Debt collectors may only contact third parties to locate the debtor and cannot reveal the debt's existence.</i>	<i>Unauthorized third-party contact can lead to privacy violations and legal penalties.</i>
<b><i>Failure to Respond to Debt Validation Letter (Within 30 Days)</i></b>	15 U.S.C. § 1692g(b)	<i>If a consumer disputes the debt within 30 days, the collector must cease collection until verification is provided.</i>	<i>Ignoring validation requests may invalidate collection efforts and result in FDCPA violations.</i>

<b><i>Failure to Respond to Debt Validation Letter (After 30 Days, State Only)</i></b>	<i>State Law</i>	<i>Some states require collectors to respond even after the 30-day federal period has passed.</i>	<i>State penalties may apply, including additional fines and loss of collection rights.</i>
<b><i>Failure to Disclose That This Is Communication from a Debt Collector</i></b>	<i>15 U.S.C. § 1692e(11)</i>	<i>Every communication must state that it is from a debt collector attempting to collect a debt.</i>	<i>Omission can be considered deceptive under FDCPA, leading to legal liability.</i>
<b><i>Failure to Include Language About Expired Statute of Limitations</i></b>	<i>15 U.S.C. § 1692e &amp; § 1692f</i>	<i>If a debt is too old to be sued on, collectors must disclose that payment may restart the statute of limitations.</i>	<i>Failure to disclose can lead to deception claims and lawsuits.</i>
<b><i>Marking Account as Disputed After Receiving a Refusal to Pay Letter</i></b>	<i>15 U.S.C. § 1692g</i>	<i>If a consumer disputes a debt, the account must be marked as disputed in credit reports and collection records.</i>	<i>Failure to update status can lead to FCRA and FDCPA violations.</i>
<b><i>Continuing Debt Collection After Being Notified That the Debt Is Invalid or in Dispute</i></b>	<i>15 U.S.C. § 1692g(b)</i>	<i>If a debt is disputed, collection must stop until verification is provided.</i>	<i>Continuing collection can result in legal action and fines.</i>
<b><i>Using Obscene, Abusive, or Threatening Language During Communication</i></b>	<i>15 U.S.C. § 1692d(2)</i>	<i>Debt collectors must remain professional and cannot use profanity, threats, or abusive language.</i>	<i>Harassment claims can result in lawsuits and regulatory action.</i>

<b><i>Failure to Mark Account as Disputed After Receiving Dispute Letter</i></b>	15 U.S.C. § 1692e(8)	<i>If a consumer disputes a debt, the collector must report it as disputed to credit bureaus.</i>	<i>FCRA violations may result in lawsuits and regulatory fines.</i>
<b><i>Threatening Legal Action Without Intention or Authority</i></b>	15 U.S.C. § 1692e(5)	<i>Collectors cannot falsely threaten lawsuits, wage garnishment, or other legal actions they do not intend to pursue.</i>	<i>False threats can lead to legal penalties and consumer lawsuits.</i>
<b><i>Misrepresenting the Amount or Legal Status of the Debt</i></b>	15 U.S.C. § 1692e(2)	<i>Debt collectors must provide accurate information about the amount owed and whether the debt is still legally enforceable.</i>	<i>Misrepresentation can result in fraud claims and legal penalties.</i>
<b><i>Contacting the Consumer at Inconvenient Times (Before 8 AM or After 9 PM)</i></b>	15 U.S.C. § 1692c(a)(1)	<i>Calls must be made only between 8 AM and 9 PM in the consumer's local time zone.</i>	<i>Violating time restrictions can result in consumer complaints and fines.</i>
<b><i>Contacting the Consumer at Their Workplace After Being Informed Not To</i></b>	15 U.S.C. § 1692c(a)(3)	<i>If the consumer tells the collector that their employer prohibits collection calls, the collector must stop calling at work.</i>	<i>Continued calls may result in FDCPA violations and lawsuits.</i>
<b><i>Failing to Cease Communication After</i></b>	15 U.S.C. § 1692c	<i>Once a written cease-and-desist letter is received, the collector may only contact the consumer to</i>	<i>Violations can lead to statutory damages and regulatory action.</i>

***a Cease and Desist  
Letter Was Sent***

*confirm receipt or notify of  
legal action.*

***Reporting False or  
Inaccurate  
Information to Credit  
Bureaus***

*15 U.S.C.  
§ 1692e(8)*

*Debt collectors must provide  
accurate information and  
correct errors on consumer  
credit reports.*

*False reporting can  
lead to FCRA violations  
and lawsuits.*

***Adding Unauthorized  
Fees or Charges to the  
Debt***

*15 U.S.C.  
§ 1692f(1)*

*Collectors may not add  
interest, fees, or charges not  
authorized by the original  
contract or state law.*

*Illegal fees can lead to  
lawsuits and regulatory  
penalties.*

***Failing to Provide  
Required Disclosures  
in Initial  
Communication***

*15 U.S.C.  
§ 1692c(c)*

*Collectors must include a  
mini-Miranda warning  
stating the call is an attempt  
to collect a debt.*

*Omission can result in  
deception claims under  
FDCPA.*

***Failing to Notify the  
Consumer of Their  
Right to Dispute the  
Debt***

*15 U.S.C.  
§  
1692g(a)(3  
)*

*The first written  
communication must inform  
consumers of their right to  
dispute the debt within 30  
days.*

*Failure to disclose can  
lead to FDCPA  
violations and legal  
action.*

***Communicating with  
the Consumer After  
Learning They Are  
Represented by an  
Attorney***

*15 U.S.C.  
§  
1692c(a)(2  
)*

*If the collector knows the  
consumer has an attorney,  
all communication must go  
through the attorney.*

*Direct communication  
can lead to lawsuits and  
regulatory action.*

***Failing to Provide a  
Debt Validation Notice***

*15 U.S.C.  
§ 1692g*

*Collectors must send a  
written validation notice*

*Non-compliance can  
invalidate collection*

***Within 5 Days of  
Initial Contact***

*within five days of first  
contact.*

*efforts and result in  
legal penalties.*

***Failure to Disclose  
That the Statute of  
Limitations (SOL)  
Has Expired***

*15 U.S.C.  
§ 1692e &  
§ 1692f*

*Collectors must notify  
consumers if the debt is too  
old for legal enforcement.*


*Failing to disclose can  
result in deception  
claims and consumer  
lawsuits.*

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### 3. Understanding Penalties (15 min)

#### **Penalties for Violating FDCPA:**

- Consumers can sue for:
  - **Actual damages** + up to **\$1,000 statutory damages**.
  - **Class action damages:** Lesser of **\$500,000** or **1% of the collector's net worth**.
  - **Attorney fees** may be awarded to consumers.

 The development of the law supports that emotional distress damages can be recovered as actual damages. In *Gertz v. Robert Welch, Inc.*, a defamation case predating the FDCPA raising First Amendment issues, the Supreme Court did not define actual injury, but held that it was not limited to out-of-pocket loss. The Court noted that the more common types of harm inflicted by defamatory falsehoods include loss of reputation and standing in the community, personal humiliation, and mental anguish and suffering.

The following injuries and symptoms are among those that courts have recognized are related to stress:

- Anxiety, paranoia, difficulty relating to others, stress, anger, “down time,” severe headaches, increased temper, adrenaline, conflict with a spouse;
- Shock;
- Crying;
- Loss of sleep, insomnia, nightmares, night sweats;
- Anxiety, nervousness, fear of foreclosure of their home, worry, loss of happiness;
- Severe distress, hypertension;
- Loss of concentration, instability;
- Hysteria, trembling;
- Irritability;

- Embarrassment, humiliation, intimidation;
- Loss of the tranquility of old age;
- Indignation;
- Future anxiety, pain, or suffering;
- Emotional or mental distress.

### **11.8.3 Medical Conditions Arising from Debt Collection Abuses**

Debt collection abuse can result in medical conditions for the consumer, which can be recovered as actual damages. Examples include:

- Loss of appetite, nausea, vomiting, sensitive stomach, loss of weight;
- Tooth pain where debt collector took funds saved for dental work;
- Ulcers, diabetic flare-ups;
- Miscarriage;
- Heart attack, heart palpitations, angina, chest constrictions;
- Becoming bedridden;
- Pain and suffering;
- Shortness of breath;
- Headaches;
- Dizziness, fainting, blacking out;
- Skin eruptions and great pain from shingles;
- Aggravated existing illness; and
- Extended illness.

### **11.8.4 Out-of-Pocket Losses**

Recoverable out-of-pocket losses in debt collection harassment cases include:

- Loss of job, income, work time, or leave from a job;
- Impairment of job advancement;
- Medical or counseling expenses;
- Medication or special diet;
- Telephone toll charges;
- Telephone charges for an unlisted number;
- Payments on an invalid claim;
- Payment of a debt barred by a statute of limitations;
- Transportation expenses;
- Conversion of consumer's property;
- The amount of a tax refund intercepted to pay a student loan that had been discharged in bankruptcy, and accountant fees for filing for the return of the intercepted funds;
- Bank overdraft charges;



- Reduced credit rating;
- Attorney fees incurred defending a prior suit;
- Bank fees;
- Bankruptcy consultation fees;
- Fees paid to recover a wrongfully repossessed vehicle;
- Unauthorized “convenience fees” paid for online and phone payments;
- A filing fee to answer a time-barred debt collection complaint against the consumer and the mailing fees for mailing that answer to the debt collector by certified mail; and
- A payment made by a debtor in response to an act that violated the FDCPA may be considered actual damages, without regard to whether the debt was in fact owed.

### **11.8.5 Injuries to Personal Relations**

Debt collection abuse can lead to actual damages based on injury to the consumer’s relationship with others, including:

- Injury to reputation;
- Harm to credit rating, loss of access to credit and to employment;
- Loss of privacy;
- Loss of consortium;
- Strain to marriage;
- Strain with family;
- Demotion by employer; and
- Humiliation.

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### **4. Q&A & Discussion (10 min)**

1. What are the key prohibited practices under the FDCPA?
2. What must a debt collector provide in the initial communication with a consumer?
3. What are the consumer’s rights to dispute a debt under the FDCPA?
4. How does the FDCPA interact with state collection laws?
5. What role does the rules chart play in identifying violations?

### **Day 3 – Q&A & Discussion Answer Key**

**6. What are the key prohibited practices under the FDCPA?**

- The FDCPA prohibits harassment, false or misleading representations, and unfair practices in debt collection. Examples include threats of violence, misrepresentation of the debt, and attempting to collect fees not authorized by law or contract.

**7. What must a debt collector provide in the initial communication with a consumer?**

- A debt collector must provide the “Mini-Miranda” warning, stating they are attempting to collect a debt and that any information obtained will be used for that purpose. Within five days, they must also provide a written validation notice with the amount of debt, creditor’s name, and consumer rights.

**8. What are the consumer’s rights to dispute a debt under the FDCPA?**

- A consumer has 30 days to dispute a debt in writing. If disputed, the collector must cease collection until verification is provided.

**9. How does the FDCPA interact with state collection laws?**

- The FDCPA sets minimum federal protections, but many states have additional laws that provide greater consumer rights or stricter regulations on debt collectors.

**10. What role does the rules chart play in identifying violations?**

- The chart helps break down FDCPA provisions, offering a clear framework for assessing whether a collector’s conduct violates specific rules and what legal remedies may be available.
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## Day 1: Homework

### ✓ Assignment: Drafting a Complaint Based on Fact Pattern

**Instructions:** Below is a fact pattern of a consumer facing FDCPA violations. Using what you've learned from the training, including the rules chart, issue spotting guidance, and damages sections, draft a revised complaint incorporating claims for FDCPA violations and emotional distress or other actual damages.

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#### Fact Pattern:

Jane Doe, a 45-year-old schoolteacher, was repeatedly harassed by a debt collector, ABC Collections, over a debt she allegedly owed to XYZ Credit Card. The debt collector called her workplace multiple times after she had explicitly requested, in writing, that all communications be sent by mail. This caused embarrassment in front of her colleagues and nearly led to disciplinary action.

Additionally, ABC Collections sent her letters falsely stating that failure to pay within 10 days would result in a lawsuit, even though the debt was past the statute of limitations. She also received multiple voicemails in which the collector falsely claimed they were attorneys and that she would be arrested if she didn't make an immediate payment.

As a result of this harassment, Jane Doe began experiencing severe anxiety, trouble sleeping, and frequent headaches. She visited her doctor, who prescribed medication for stress-related symptoms. She also had to take unpaid leave from work due to anxiety episodes triggered by the repeated calls.

#### Your Task:

1. **Identify the FDCPA violations** present in this scenario.
2. **Draft a complaint paragraph** alleging a violation of the FDCPA, focusing on the illegal collection practices.
3. **Write a paragraph describing Jane Doe's actual damages, including emotional distress.** Use strong, fact-based language supported by case law where appropriate.
4. **Propose an appropriate demand for damages** based on statutory and actual damages.

## **Answer Key – Day 1 Homework**

### **Sample Complaint Draft**

#### **COUNT X – VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)**

1. Defendant ABC Collections is a “debt collector” as defined by 15 U.S.C. § 1692a(6).
2. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).
3. Defendant engaged in conduct that violated the FDCPA, including:
  - a. Communicating with Plaintiff at her workplace despite knowing it was inconvenient and after being expressly requested not to do so (15 U.S.C. § 1692c(a)(3)).
  - b. Using false or misleading representations, including falsely stating that legal action would be taken and misrepresenting their status as attorneys (15 U.S.C. § 1692e(5), (9), (10)).
  - c. Threatening arrest for non-payment of a civil debt, an act that is prohibited under the FDCPA (15 U.S.C. § 1692e(4)).

#### **DAMAGES**

1. As a direct and proximate result of Defendant’s unlawful conduct, Plaintiff has suffered significant emotional distress, including anxiety, humiliation, and loss of sleep.
2. Plaintiff has experienced physical symptoms including headaches, nausea, and stress-induced illness.
3. Plaintiff was forced to take unpaid leave from work due to the emotional toll caused by Defendant’s actions, resulting in economic damages.
4. Plaintiff is entitled to statutory damages under 15 U.S.C. § 1692k(a)(2)(A) and actual damages for emotional distress and financial losses under 15 U.S.C. § 1692k(a)(1).

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendant for:

- A. Statutory damages in the amount of \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- B. Actual damages in an amount to be determined at trial, including for emotional distress and lost wages, pursuant to 15 U.S.C. § 1692k(a)(1);
- C. Costs and reasonable attorney’s fees pursuant to 15 U.S.C. § 1692k(a)(3); and
- D. Any other relief this Court deems just and proper.