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# Understanding the Assessment of Collection Costs and State Statutes

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# Agenda

- **Legal Disclaimer**
- **Regulatory Environment**
  - CFPB, Financial Regulators, Plaintiffs
- **Types of Debt**
- **Necessity for Written Contract**
- **Collection Costs Case Law**
- **Elements of a Written Contract**
- **State Statutes**
  - Interpreting the Statutes
  - Which State Law Applies?
- **Fees are a Concern for Creditors & Collectors Alike**
- **Question and Answer Period**

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# Legal Disclaimer

- This presentation **does not** constitute legal advice. Prior to any legal or compliance changes within your organization, please consult your legal counsel.
- This presentation may be recorded for future dissemination.
- Finally, although we believe the information in this presentation is accurate as of this date, the statutes, regulatory guidance and case law in this area is ever changing. Please continue to monitor for changes.

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# Regulatory Framework

## Consumer Financial Protection Bureau (“CFPB”)

- Created by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 in response to the recession of 2008.
- Formally began operations in 2011.
- Works with other regulators, including State Attorney Generals and financial regulators, targeting UDAAP and other violations.
- Has announced that it will focus on, among other topics, student lending and debt collection in the upcoming year.
- All creditors and debt collectors should also be conscious of litigation risk associated with asset recovery.

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# Types of Debt

## **Perkins Loans:**

- Federal Loan Program
- Regulated by federal regulations and guidelines

## **Types of Debt Subject to State Collection Cost Restrictions:**

- Any type of Accounts Receivable debt, including
  - Tuition loan extended directly to student
  - Any extension of credit directly to student
  - Student Receivables such as Library Fines, Parking and Cafeteria fees, etc.
  - DOES NOT include federally guaranteed student loans, which are regulated by other federal guidelines ([34 CFR 682.410](#))

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# Need for Written Agreement – FDCPA

- FDCPA - it is a violation to collect any amount that is not “expressly authorized by the agreement creating the debt or permitted by law.”

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# Collection Costs Case Law

1. *Kojetin v. C U Recovery, Inc.*, 212 F.3d 1318 (8th Cir. 2000), collection costs must be specifically laid out in the agreement between the creditor and debtor; must be related to actual costs of collection.
2. *Seeger v. AFNI, Inc.*, 548 F.3d 1107, 1113 (7th Cir. 2008), percentage-based collection fee permissible under FDCPA if collection costs allowable under state law and contract that creates debt also includes language authorizing the fee.
3. *Bradley v. Franklin Collection Service, Inc.*, 739 F.3d 606 (11th Cir. 2014). Court holds that written agreement must specify exact percentage of collection costs.

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# Elements of a Written Agreement

To recover the maximum allowable collection costs in states that permit such costs, you should include the following in your written agreement:

- The terms of the loan or the extension of credit.
- The repayment terms.
- The conditions of default.
- The CONSEQUENCES of default laid out in VERY SPECIFIC detail.  
Written agreement must specify whether collection costs will be added if the student defaults and at what percentage.
- If there are internal collection fees, you should disclose them separately because some states, like KS, regulate those fees separately.
- Late fees or other fees attached to default, or additional legal fees if you choose to enforce the written agreement in court.
- Written agreement may be electronic, but to validate the debt the signature should be printable.



# State Collection Costs Laws\*

(\*More Restrictive than just requiring a written agreement, and/or imposing a fee limit of 33 1/3 %)

| State          | Collection Cost Status   | Notes  |
|----------------|--|--|
| California     | • Prohibited   | <a href="#">Cal. Civ. Code § 1788.14(b)</a>  |
| Connecticut    | • If debtor is liable, not more than 15% of the amount collected | <a href="#">Conn. Gen. Stat. Ann. § 36a-805(a)(13)</a>   |
| Guam           | • Prohibited   | <a href="#">14 G.C.A. § 3204</a> (page 7)  |
| Hawaii         | • Prohibited, except for debts to the University of Hawaii       | Page 10 of <a href="http://cca.hawaii.gov/pvl/files/2013/08/hrs_pvl_443b.pdf">http://cca.hawaii.gov/pvl/files/2013/08/hrs_pvl_443b.pdf</a> |
| Kansas         | • May not exceed 15%   | <a href="#">Kan. Stat. Ann. 16a-2-507</a>  |
| Louisiana      | • Prohibited – however, attorney's fees are permitted            | <a href="#">La. Rev. Stat. Ann. § 9:3534(B)</a>  |
| North Carolina | • Prohibited   | <a href="#">N.C. Gen. Stat. § 58-70-115(2)</a>   |

# State Collection Costs Laws\*

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| State          | Collection Cost Status   | Notes  |
|----------------|--|--|
| North Dakota   | • Prohibited   | <a href="#">N.D. Admin. Code § 13-04-02-09(3) &amp; (4)</a> (page 6) |
| Puerto Rico    | • Prohibited   | <a href="#">10 P.R. Laws Ann. § 981p(10)</a>                         |
| South Carolina | • Prohibited   | <a href="#">S.C. Code Ann. § 37-2-414</a>                            |
| Utah           | • Cannot be more than 40% of principal   | <a href="#">Utah Code Ann. § 12-1-11</a>                             |
| West Virginia  | Prohibited, except for schools located in WV:                                      | <a href="#">W. Va. Code Anno. § 46A-2-128(c), (d)</a>                |
| Wisconsin      | • Prohibited, except that Wisconsin state universities may assess collection costs | <a href="#">Wis. Admin. Code § DFI-Bkg 74.11(1)-(2)(a)</a>           |

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# Which State Law Applies?

- Although the contract originates in a state that differs from consumer's state of residency, the applicable law is the law of the state of residence of the debtor.
- Courts are more likely to apply their own consumer protection statutes to protect their citizens.
- Choice of law provisions unlikely to be enforced when there are restrictive consumer protection statutes at issue.

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# Fees are a Concern for Creditors & Collectors Alike

*Both the University/School and the Debt Collector can be liable in a lawsuit if the debt collector refuses to abide by applicable state laws on collection costs and fees.*

*Patzka v. Viterbo Coll., 917 F. Supp. 654 (W.D. Wis. 1996)* – **both** the school and the debt collector were found liable for violations of the FDCPA and the Wisconsin Consumer Act (“WCA”). Court states that even if fees were not prohibited by the WCA, there was no written agreement disclosing collection fees and attorneys fees.

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# Fees are a Concern for Creditors & Collectors Alike, cont'd

- State laws directed at the Creditor: **“An extender of credit may not contract with a consumer for the reimbursement of fees paid to a collection agency employed to collect the consumer's indebtedness”** La. Rev. Stat. Ann. § 9:3534B.
- UDAAP, and other state consumer protection statutes, may implicate creditors who do not comply with various state requirements for the addition of fees.
- All collection contracts require the debt collector to abide by federal, state and local law, which is what we are always striving for.

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# QUESTIONS?



## PLEASE USE CHAT FUNCTION.

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