

Recent Agency Bulletins Expand Consumer's Rights Against Debt Harassment

By Jonathan Hasebe



According to the July 2013 statistics published by the Federal Reserve, American consumers are collectively \$11.16 trillion in debt. On average, U.S. households carry \$15,325

in credit card debt, approximately \$147,900 in mortgage debt and more than \$32,000 in student loan debt.

When a borrower stops repaying his or her debts, creditors often will hire debt collection agencies to get the borrower to repay what is owed. In response to the abusive tactics employed by some collections agencies, Congress passed the Fair Debt Collection Practices Act in 1977 to regulate how personal debts may be collected.

In short, the act prohibited certain "abusive and deceptive" conduct by collection agencies seeking to collect.

Failure to abide by the requirements of the act potentially could expose unscrupulous collections agencies to statutory damages of up to \$1,000 plus reasonable attorney's fees. Under the Fair Debt Collection Practices Act, collection agencies are required to identify themselves in every communication, provide the name and address of the original creditor, verify the debt, and notify the consumer of their right to dispute the debt.

With limited exceptions, collection agencies must cease communication with the creditor after receiving written notice by the creditor. Further, the act prohibited a number of abusive tactics previously employed by collections agencies such as:

- Threatening a legal enforcement action if such action has not been contemplated.
- Using abusive or profane language.
- Continually calling with the intent to annoy or harass the debtor.
- Misrepresenting the amount of the debt.
- Calling too early in the morning or too late at night.
- Discussing the debt with third parties.
- Reporting false information on a consumer's credit report.

In 2011, the Consumer Financial Protection Bureau was created following the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

On July 10, the Consumer Financial Protection Bureau published two bulletins regarding debt collection practices. The first bulletin incorporated and expanded on the existing Fair Debt Collection Practices Act laws regarding what tactics would be considered "unfair, deceptive, or abusive."

Among the prohibited actions, the consumer protection bureau included the following:

- Collecting or assessing a debt and/or any additional amounts in connection with a debt (including interest, fees, and charges) not expressly authorized by the agreement creating the debt or permitted by law.
- Failing to post payments timely or properly or to credit a consumer's account with payments the consumer submitted on time and then charging late fees to that consumer.
- Misrepresenting that a communication is from a government source or that the source of the communication is affiliated with the government.

Both these bulletins (along with sample letters consumers can send to debt collection agencies) may be found at www.consumerfinance.gov.

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