

24 ADDITIONAL LAW

Fair Credit Billing from <http://www.ftc.gov/bcp/online/pubs/credit/fcb.htm>

Have you ever been billed for merchandise you returned or never received? Has your credit card company ever charged you twice for the same item or failed to credit a payment to your account? While frustrating, these errors can be corrected. It takes a little patience and knowledge of the dispute settlement procedures provided by the Fair Credit Billing Act (FCBA).

The law applies to "open end" credit accounts, such as credit cards, and revolving charge accounts - such as department store accounts. It does not cover installment contracts - loans or extensions of credit you repay on a fixed schedule. Consumers often buy cars, furniture and major appliances on an installment basis, and repay personal loans in installments as well.

What types of disputes are covered?

The FCBA settlement procedures apply only to disputes about "billing errors." For example:

- unauthorized charges. Federal law limits your responsibility for unauthorized charges to \$50;
- charges that list the wrong date or amount;
- charges for goods and services you didn't accept or weren't delivered as agreed;
- math errors;
- failure to post payments and other credits, such as returns;
- failure to send bills to your current address - provided the creditor receives your change of address, in writing, at least 20 days before the billing period ends; and
- charges for which you ask for an explanation or written proof of purchase along with a claimed error or request for clarification.

To take advantage of the law's consumer protections, you must:

- write to the creditor at the address given for "billing inquiries," not the address for sending your payments, and include your name, address, account number and a description of the billing error.
- send your letter so that it reaches the creditor within 60 days after the first bill containing the error was mailed to you.

Send your letter by certified mail, return receipt requested, so you have proof of what the creditor received. Include copies (not originals) of sales slips or other documents that support your position. Keep a copy of your dispute letter.

The creditor must acknowledge your complaint in writing within 30 days after receiving it, unless the problem has been resolved. The creditor must resolve the dispute within two billing cycles (but not more than 90 days) after receiving your letter.

Date
Your Name
Your Address
Your City, State, Zip Code
Your Account Number
Name of Creditor
Billing Inquiries
Address
City, State, Zip Code
Dear Sir or Madam:
I am writing to dispute a billing error in the amount of \$_____ on my account. The amount is inaccurate because (describe the problem). I am requesting that the error be corrected, that any finance and other charges related to the disputed amount be credited as well, and that I receive an accurate statement.

Enclosed are copies of (use this sentence to describe any enclosed information, such as sales slips, payment records) supporting my position. Please investigate this matter and correct the billing error as soon as possible.

Sincerely,

Your name

Enclosures: (List what you are enclosing.)

What happens while my bill is in dispute?

You may withhold payment on the disputed amount (and related charges), during the investigation. You must pay any part of the bill not in question, including finance charges on the undisputed amount.

The creditor may not take any legal or other action to collect the disputed amount and related charges (including finance charges) during the investigation. While your account cannot be closed or restricted, the disputed amount may be applied against your credit limit.

Will my credit rating be affected?

The creditor may not threaten your credit rating or report you as delinquent while your bill is in dispute. However, the creditor may report that you are challenging your bill. In addition, the Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants who exercise their rights, in good faith, under the FCBA. Simply put, you cannot be denied credit simply because you've disputed a bill.

What if...

...the bill is incorrect?

If your bill contains an error, the creditor must explain to you - in writing - the corrections that will be made to your account. In addition to crediting your account, the creditor must remove all finance charges, late fees or other charges related to the error.

If the creditor determines that you owe a portion of the disputed amount, you must get a written explanation. You may request copies of documents proving you owe the money.

...the bill is correct?

If the creditor's investigation determines the bill is correct, you must be told promptly and in writing how much you owe and why. You may ask for copies of relevant documents. At this point, you'll owe the disputed amount, plus any finance charges that accumulated while the amount was in dispute. You also may have to pay the minimum amount you missed paying because of the dispute.

If you disagree with the results of the investigation, you may write to the creditor, but you must act within 10 days after receiving the explanation, and you may indicate that you refuse to pay the disputed amount. At this point, the creditor may begin collection procedures. However, if the creditor reports you to a credit bureau as delinquent, the report also must state that you don't think you owe the money. The creditor must tell you who gets these reports.

...the creditor fails to follow the procedure?

Any creditor who fails to follow the settlement procedure may not collect the amount in dispute, or any related finance charges, up to \$50, even if the bill turns out to be correct. For example, if a creditor acknowledges your complaint in 45 days - 15 days too late - or takes more than two billing cycles to resolve a dispute, the penalty applies. The penalty also applies if a creditor threatens to report - or improperly reports - your failure to pay to anyone during the dispute period.

An important caveat

Disputes about the quality of goods and services are not "billing errors," so the dispute procedure does not apply. However, if you buy unsatisfactory goods or services with a credit or charge card, you can take the same legal actions against the card issuer as you can take under state law against the seller.

To take advantage of this protection regarding the quality of goods or services, you must:

- have made the purchase (it must be for more than \$50) in your home state or within 100 miles of your current billing address;
- make a good faith effort to resolve the dispute with the seller first.

The dollar and distance limitations don't apply if the seller also is the card issuer - or if a special business relationship exists between the seller and the card issuer.

Other billing rights

Businesses that offer "open end" credit also must:

- give you a written notice when you open a new account - and at certain other times - that describes your right to dispute billing errors;
- provide a statement for each billing period in which you owe - or they owe you - more than one dollar;
- send your bill at least 14 days before the payment is due - if you have a period within which to pay the bill without incurring additional charges;
- credit all payments to your account on the date they're received, unless no extra charges would result if they failed to do so. Creditors are permitted to set some reasonable rules for making payments, say setting a reasonable deadline for payment to be received to be credited on the same date; and
- promptly credit or refund overpayments and other amounts owed to your account. This applies to instances where your account is owed more than one dollar. Your account must be credited promptly with the amount owed. If you prefer a refund, it must be sent within seven business days after the creditor receives your written request. The creditor must also make a good faith effort to refund a credit balance that has remained on your account for more than six months.

Suing the creditor

You can sue a creditor who violates the FCBA. If you win, you may be awarded damages, plus twice the amount of any finance charge - as long as it's between \$100 and \$1,000. The court also may order the creditor to pay your attorney's fees and costs.

If possible, hire a lawyer who is willing to accept the amount awarded to you by the court as the entire fee for representing you. Some lawyers may not take your case unless you agree to pay their fee - win or lose - or add to the court-awarded amount if they think it's too low.

Reporting FCBA violations

The Federal Trade Commission (FTC) enforces the FCBA for most creditors except banks. The FTC works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop and avoid them. To file a complaint or to get free information on consumer issues, call toll-free, 1-877-FTC-HELP (1-877-382-4357), or use the complaint form at www.ftc.gov. The FTC enters Internet, telemarketing, identity theft and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

FAIR DEBT COLLECTION PRACTICES ACT UPDATE -- 1999 *

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I. INTRODUCTION

This article provides an overview of recent developments concerning the application of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. ("FDCPA") (the full text is in an appendix). The statute regulates the conduct of "debt collectors" in collecting "debts" owed or allegedly owed by "consumers." It is designed to protect consumers from unscrupulous collectors, whether or not there is a valid debt. The FDCPA broadly prohibits unfair or unconscionable collection methods; conduct which harasses, oppresses or abuses any debtor; and any false, deceptive or misleading statements, in connection with the collection of a debt; it also requires debt collectors to give debtors certain information. 15 U.S.C. §§1692d, 1692e, 1692f and 1692g.

In enacting the FDCPA, Congress recognized the "universal agreement among scholars, law enforcement officials, and even debt collectors that the number of persons who willfully refuse to pay just debts is minuscule [sic] ... [T]he vast majority of consumers who obtain credit fully intend to repay their debts. When default occurs, it is nearly always due to an unforeseen event such as unemployment, overextension, serious illness, or marital difficulties or divorce."

The FDCPA is liberally construed in favor of the consumer to effectuate its purposes.

Statutory damages are recoverable for violations, whether or not the consumer proves actual damages.

II. STATUTORY COVERAGE AND DEFINITIONS

WHAT IS A "DEBT"

"Debt" is defined as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment." 15 U.S.C. §1692a(5) (emphasis added). Business and agricultural loans are therefore not "debts" covered by the FDCPA. A personal guaranty of a business loan is also not covered.

The following are areas of recent litigation activity concerning what is a "debt":

DISHONORED CHECKS

In recent years there has been a substantial amount of litigation concerning whether dishonored checks are "debts" within the meaning of the FDCPA. The statutory definitions clearly encompass dishonored checks, in that liability on such a check is an "alleged obligation . . . to pay money arising out of a transaction", subject to the FDCPA if the "property . . . which [is] the subject of the transaction" was "primarily for personal, family, or household purposes."

The only appellate courts to have addressed the issue have held that dishonored checks are debts. In Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C., a divided Seventh Circuit held:

Resorting to legislative history is unnecessary here, however, because the language in the statute's definition of "debt" is plain.

A "debt," the collection of which is governed by the FDCPA, is defined in the Act as:

any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

15 U.S.C. §1692a(5). Appellants would have us read into this definition the additional requirement that the debt flow from a specific type of consumer transaction -- one involving the offer or extension of credit. However, we see no language in the Act's definition of "debt" (or any other section of the Act) that mentions, let alone requires, that the debt arise from an extension of credit. Nor do we find patent ambiguity in the definition of "debt." The definition is not "beset with internal inconsistencies [or] . . . burdened with vocabulary that escapes common understanding." [citation] In the absence of ambiguity, our inquiry is at an end, and we must enforce the congressional intent embodied in the plain wording of the statute. [citation]

On the contrary, the plain language of the Act defines "debt" quite broadly as "any obligation to pay arising out of a [consumer] transaction." In examining this definition, we first focus on the clear and absolute language in the phrase, "any obligation to pay." Such absolute language may not be alternatively read to reference only a limited set of obligations as appellants suggest. [citation] As long as the transaction creates an obligation to pay, a debt is created. We harbor no doubt that a check evidences the drawer's obligation to pay for the purchases made with the check, and should the check be dishonored, the payment obligation remains. [citation]

Bass was followed by a later Seventh Circuit decision, Ryan v. Wexler & Wexler, by the Ninth Circuit, in Charles v. Lundgren & Associates, P.C. by the Eighth Circuit, in Duffy v. Landber, and by the Tenth Circuit in Snow v. Riddle. The Sixth Circuit and the Ohio Court of Appeals, in two related cases, also held that a dishonored check is covered. Remarkably, the Sixth Circuit decision was marked not for publication.

Finally, an Eleventh Circuit decision addressing whether obligations arising from an auto rental are "debts" approved the reasoning of Bass and held that an extension of credit is not required under the FDCPA. A subsequent Eleventh Circuit decision states in dicta that a check is a debt.

The overwhelming majority of lower court decisions either hold that dishonored checks issued by the debtor for consumer goods or services fall within the FDCPA or apply the FDCPA to such debts. The legislative history of the FDCPA clearly states that dishonored checks are covered. The Report of the House Banking Committee accompanying H.R. 5294 states:

Opponents of this legislation claim that, regardless of the amount of consumer harassment or deception, there should be no legislation because the number of unpaid bills and bad checks keeps increasing. This reasoning is misleading. The issue is not one of uncollected debts, but rather whether or not consumers must lose their civil rights and be terrorized and abused by unethical debt collectors.

The House Report also stated that "the committee intends that the term 'debt' include consumer obligations paid by check or other non-credit consumer obligations."

Similarly, the hearings on the FDCPA contain discussion of the effect of the proposed legislation on checks. Indeed, the American Collectors Association representative submitted a statement which complained that the proposed legislation "would make it more difficult for financial collection services to collect or attempt to collect bad checks."

The Federal Trade Commission has also consistently held that checks are subject to the FDCPA. The FTC Staff Commentary on the FDCPA illustrates the definition of "debt" with the example of an NSF check used to purchase goods or services intended for household or personal use. The Commission itself has adopted this position in a ruling denying a petition to quash a subpoena served on a debt collector

specializing in dishonored checks. The FTC has also brought several civil actions against debt collectors based on attempts to collect dishonored checks.

However, debt collectors persistently claim that a dishonored check is not a "debt," and occasional cases have agreed with them. Their basic argument is that the definition of "credit" in the Truth in Lending Act ("TILA") should be used to limit the definition of "debt" in the FDCPA. They rely on Zimmerman v. HBO Affiliate Group, for this proposition. In Zimmerman, the Third Circuit affirmed dismissal of plaintiff's FDCPA complaint based on a demand letter sent to persons who allegedly intercepted cable signals. The court found that the illegal interception of signals was not a consensual "transaction" and therefore was not covered by the FDCPA's definition of debt.

We find that the type of transaction which may give rise to a "debt" as defined in the FDCPA, is the same type of transaction as it dealt with in all other subchapters of the Consumer Credit Protection Act, i.e., one involving the offer or extension of credit to a consumer. Specifically it is a transaction in which a consumer is offered or extended to acquire "money property, insurance, or services" which are "primarily for household purposes" and to defer payment.

There was no issue as to whether issuance of a check to pay for goods or services is an FDCPA "transaction."

The Zimmerman dicta regarding the extension of credit is wrong. While the Zimmerman court referred generally to FDCPA "transactions" as involving the same sort of circumstances as other matters regulated by the Consumer Credit Protection Act, the CCPA includes far more than just TILA and clearly encompasses consensual "transactions" that do not involve loans or credit sales. The FDCPA definition of "creditor" is clearly broader than the TILA definition, in that it includes not only someone who "offers or extends credit" but anyone to "whom a debt is owed." For this reason, four other Courts of Appeals have disapproved the implementation of the above-quoted language in Zimmerman.

Check guaranty companies are statutory "debt collectors" because the check was in default at the time it was acquired by the guaranty company.

The statutory liability of a prior endorser on a check which is deposited or cashed and returned for insufficient funds may not be a "debt," if there is no purchase of goods or services for consumer purposes.

RENT, CONDOMINIUM ASSESSMENTS

An issue closely analogous to the dishonored check issue is presented by attempts to collect rent and condominium assessments. There is no extension of credit in the sense of incurring an obligation and repaying it over time with interest. Nevertheless, the consumer incurs an obligation to pay money in the future as part of a consensual transaction.

In Newman v. Boehm, Pearlstein & Bright, the Seventh Circuit had no difficulty in concluding that condominium assessments were FDCPA "debts:"

By paying the purchase price and accepting title to their home, the Ritters became bound by the Declaration of Covenants, Conditions, and Restrictions of their homeowners association, which required the payment of regular and special assessments imposed by the association. . . . It is therefore clear that the obligation to pay in these circumstances arose in connection with the purchase of the homes themselves, even if the timing and amount of particular assessments was yet to be determined. . . .

Because the statute's definition of a "debt" focuses on the transaction creating the obligation to pay (Bass, 111 F.3d at 1325), it would seem to make little difference under that definition that unit owners generally are required to pay their assessments first, before any goods or services are provided by the association. That would only be important if the statute required a credit obligation, which Bass says it does not. 111 F.3d at 1326. Regardless of whether the assessment or the service comes first, the obligation to pay is derived from the purchase transaction itself. The assessments at issue in this case therefore qualify as "obligations of a consumer to pay money arising out of a transaction." 15 U.S.C. §1692a(5).

Other recent decisions reach the same conclusion.

Other claims for money pursuant to a lease are also covered. In Brown v. Budget Rent-A-Car Systems, Inc., the Eleventh Circuit held that a claim by a car rental company against a consumer renter for property damage to the rented vehicle was covered by the FDCPA, even though no extension of credit was involved:

Does a "debt" require the extension of credit? We start with the plain language of the statute. See Holly Farms Corp. v. NLRB, 517 U.S. 392 (1996). The only relevant reference to an extension of credit in the Act is in the definition of "creditor." The Act defines "creditor" in the disjunctive. As "a general rule, the use of a disjunctive in a statute indicates alternatives and requires that those alternatives be treated separately. Hence, language in a clause following a disjunctive is considered inapplicable to the subject matter of the preceding clause." Quindlen v. Prudential Ins. Co. of America, 482 F.2d 876, 878 (5th Cir. 1973).

The Seventh Circuit recently provided a thorough analysis of the definition of debt as used in the FDCPA. In Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C., 111 F.3d 1322 (7th Cir. 1997), the parties disputed whether a dishonored check created debt that would invoke the protections of the FDCPA. The Bass court found that the payment obligation which arose from a dishonored check constitutes a debt as defined in the Act. Id. at 1325. The court commented on the broad definition of debt in the Act and reasoned that "as long as the transaction creates an obligation to pay, a debt is created." Id. We agree with that reading of the statute. Extension of credit is not a prerequisite to the existence of a debt covered by the FDCPA. Budget's assertion that Brown is obligated as a result of consumer transaction suffices to bring the obligation within the ambit of the FDCPA. See 15 U.S.C. §1692a(5)

It should be noted that the claim was against the renter: claims against tortfeasors who have no contractual relationship with the creditor are generally not thought to be covered by the FDCPA.

In Romea v. Heiberger & Associates, the court held that unpaid apartment rentals were a "debt," no extension of credit being necessary under Bass. The court further held that a statutory eviction notice is subject to the Act:

Defendant argues also that the Section 711 notice was not a communication to collect a debt within the meaning of the statute. Section 1692a(11) defines "communication" as "the conveying of information regarding a debt directly or indirectly to any person through any medium. In view of the fact that the Section 711 notice demanded payment on pain of the commencement of eviction proceedings, there is no colorable argument that it does not satisfy the FDCPA's sweeping definition of communication.

In Travieso v. Gutman, Judge Weinstein of the Eastern District of New York likewise held that apartment rent was a "debt" to which the FDCPA applied. "[R]ent clearly fits the definition of debt embodied in the FDCPA." However, there are several district court decisions and a Florida appellate decision to the contrary.

http://www.law.cornell.edu/topics/consumer_credit.html

Federal Material

Federal Statutes

- Consumer Credit Protection Act - [15 U.S. Code, Chapter 41](#)
- Truth In Lending Act - [15 U.S.C. § 1601](#).
- Fair Credit Reporting Act - [15 U.S.C. §§ 1681](#)
- Fair Credit Billing Act - [15 U.S.C. § 1637](#)
- Equal Credit Opportunity Act - [15 U.S.C. §§ 1691 - 1691e](#).
- The Fair Credit Debt Collection Act - [15 U.S.C. §§ 1692 - 1692o](#).

Federal Agency Regulations

- Code of Federal Regulations: [12 C.F.R.](#) - Banks and Banking

Federal Judicial Decisions

- U.S. Supreme Court: [Recent Decisions on Consumer Credit](#)
- U.S. Circuit Courts of Appeals: [Recent Decisions on Consumer Credit](#)

State Material

State Statutes

- [Uniform Commercial Code](#) - (As Adopted by Particular States)
- [Uniform Consumer Credit Code](#)
- New York law governing Unauthorized or Improper Use of Credit Cards and Debit Cards - [New York General Business Law §§ 511 et seq.](#)
- New York law governing Debt Collection Procedures - [New York General Business Law §§ 600 et seq.](#)
- New York law governing Consumer Credit Balances - [New York General Business Law §§ 710 et seq.](#)
- California law governing credit cards and various other aspects of consumer credit - [California Civil Code §§ 1747 et seq.](#)
- California law governing fees in consumer credit agreements and related consumer protections - [California Financial Code §§ 4000 et seq.](#)
- California law governing credit cards - [California Civil Code §§ 1747 et seq.](#)

State Judicial Decisions

- N.Y. Court of Appeals:
 - [Decisions on Consumer Credit](#)
 - [Commentary from liibulletin-ny](#)
- [Appellate Decisions from Other States](#)

Other References

Key Internet Sources

- [Consumer Law Page](#)
- [U.S. Federal Trade Commission](#)
- [Consumer Handbook to Credit Protection Laws](#) (on-line pamphlet from the Federal Reserve)
- [Nolo Legal Encyclopedia](#)
- freeadvice.com: [Credit Problems and Lawyers](#), [Creditors' Rights](#)
- [It's Legal!](#)
- [National Foundation for Consumer Credit](#)
- [Consumer Credit Guide](#)
- [House Committee on Banking and Financial Services](#) (includes information from Subcommittee on Financial Institutions and Consumer Credit)
- ILRG Legal Forms Archive: [Credit and Collection](#), [Loans and Borrowing](#)
- *Useful Offnet (or Subscription - \$) Sources*
- Good Starting Point in Print: Dee Pridgen, *Consumer Credit and the Law*, Clark Boardman Callaghan, [West Group](#) (1986, looseleaf, updated annually)