

Intersection of the FDCPA with Other Practice Areas

I Persons and Transactions covered by the FDCPA.

Coverage by the Fair Debt Collection Practices act (FDCPA) is largely determined by the definition of “debt collector”. 15 USC § 1692a(6). The definition of “debt collector” incorporates three other terms defined in the act: “consumer”, “debt”, and “creditor”. 15 USC § 1692a. The act only applies to consumer debts, that is debt incurred by individuals for primarily personal, family, or household purposes. 15 USC § 1692a(5). A “debt collector” is any person who “regularly collects or attempts to collect” debts due another. 15 USC § 1692a(6).

There are exceptions to the “debt collector” definition. Most of the exceptions focus on clarifying the phrase “due another”. The Exceptions from the definition of debt collector include: (1) Any officer or employee of a creditor who collects for that creditor; (2) Any person acting on behalf of a company or corporation which is controlled or owned by a parent or subsidiary corporation; (3) Any person working for the United States or State government; (4) Any person attempting to serve legal process on any other person; and (5) Any person working as a Non-profit consumer counselor. 15 USC § 1692a(6).

The following, generally, are “debt collectors”.

- **Collection Agencies.** *Cirkot v. Diversified Systems, Inc., 839 F.Supp. 941 (D. Conn. 1993).*
- **Attorneys.** (*Garret v. Derbes, 110 F.3d 317 (5th Cir. 1997)*)(Attorney received 639 debt collection cases which constituted less than 1% of the

Attorney's law practice. Court held the attorney was a debt collector in that the attorney regularly collected debts due another.) *But see, Mertes v. Devitt, 734 F.Supp. 872 W.D.Wis.,1990*(Defendant was an attorney licensed to practice law in Wisconsin. On December 15, 1988 he sent a letter to the plaintiff seeking to collect an outstanding debt for his client, Havill-Spoerl Motor Corporation. The letter did not comply with the requirements of the FDCPA. In the past ten years, defendant has engaged in collection efforts on behalf of Havill-Spoerl a total of fifteen times. Defendant engaged in no other collection activity in 1989 or 1987. Defendant handled one other collection matter in 1988 and one in 1986. Defendant's debt collection practice is less than one percent of his total legal practice. Court ruled that Defendant lawyer was not a debt collector.)

- **Creditors using a different name.** Creditors are generally exempt from FDCPA coverage. But, when a creditor uses a different name, the original creditor becomes a debt collector. *Orenbuch v. North Shore Health Systems, Inc., 250 F. Supp. 2d 145 (E.D.N.Y. 2003)*(A collection department of a hospital used a name other than the Hospital's name to collect the debt, and thus, the collection department was considered a separate entity subject to the FDCPA.)
- **Purchasers of debt after default.** *15 USC § 1692a(4) and see Munoz v. Pipestone, 397 F.Supp.2d 1129, 1133 (D.Minn.2005)* (holding that debt

purchaser who never communicated with consumer qualified as debt collector under the FDCPA where debt purchaser had agreement with collection agency that it would collect the purchased debt, and the purchaser's principal business was debt collection); *and see Olvera v. Blitt & Gaines, P.C.*, 431 F.3d 285 (7th Cir. 2005).

- **Check guarantee services.** *Taylor v. Checkrite, Ltd.*, 627 F. Supp. 2d 415 (S.D. Ohio 1986).

Usually, not “debtor collectors”.

- **Creditors collecting their own debts.** 15 USC § 1692a(6). *See also Havens-Tobias v. Eagle*, 127 F. Supp. 2d 889 (S.D. Ohio 2001)(creditor is not ordinarily vicariously liable for the FDCPA violations of its attorney.)
- **Assignees (before default)** - car finance companies and mortgage servicing companies. 15 USC § 1692a(6)
- **Business debtors.** 15 USC § 1692a(5).
- **Repossession and foreclosure companies.** Generally, the taking of the collateral is not a debt collection activity. *Goldstein v. Chrysler Financial Co., LLC*, 276 F. Supp. 2d 687 (E.D. Mich. 2003)(Neither a skip tracer hired to find a car nor a repossession agent were debt collectors.) *and see Arruda v. Sears, Roebuck & Co.*, 273 B.332 (D.R.I. 2002)(Attorneys who sought only to replevy secured property post-bankruptcy are not attempting to collect a “debt”, i.e. an obligation to pay money, and therefore were not

subject to the FDCPA. The Plaintiff's alleged that the replevin remedy was merely a pressure tactic to extract a cash settlement.)

- **Process servers.** 15 USC § 1692a(6)(D).

II. Interesting Utah Cases concerning Foreclosure Attorneys

*Maynard v. Cannon, 650 F.Supp.2d 1138 (D.Utah 2008)*¹ Bryan Cannon sought to enforce the foreclosure remedy, as described in Title 57 of the Utah Code. To that end, Bryan Cannon filled a Substitution of Trustee, signed by Household, which appointed Bryan Cannon as Trustee of the Deed of Trust. Bryan Cannon filed a Notice of Default with the Salt Lake County Recorder. Bryan Cannon mailed the Substitution of Trustee and Notice of Default to the Mortgagor Judith Maynard. Bryan Cannon's office received a request for a pay off from Mountain America Credit Union Cannon sent a pay off statement requesting \$147,424.95 to payoff the account in full. (*See Utah Code Section 57-1-21.5*) Maynard wrote Cannon requesting information, including copies of all documents provided to Maynard when she obtained the loan, a complete accounting of her payments, and documents supporting all of the payoff amounts. Cannon replied by letter enclosing the document his office had regarding the mortgage and foreclosure. Maynard negotiated an agreement whereby Household agreed to accept \$117,000 as payment in full on the loan. While Maynard and Household reached this agreement in April, 2004, Household did not tell Cannon until June, 2004. Cannon recorded a cancellation of Notice of Default on June 25, 2004.

¹ Judge Dale A. Kimball, presiding

Holding: There is no evidence that Cannon is a “debt collector”.

Ruling: If a party falls only within the security interest provisions of the definition, then they are subject only to Section 1692f(6) of the FDCPA. All other provisions of the FDCPA do not apply to a party enforcing a security interest.

Problem: The one “debt collector” action Cannon took: Sending an FDCPA notice.

Maynard v. Cannon, 401 Fed.Appx. 389, 2010 WL 4487113 (C.A.10 (Utah))

The 10th Circuit rules that Bryan Cannon is a “debt collector”, but all the alleged activity that Bryan Cannon was involved in, was not “debt collection”. Cannon took two actions: (1) filing and sending the Notice of Default; and (2) responding to Maynard’s April 2004 letter requesting information about her loan. Neither action provides a basis for liability. *Utah Code Section 57-1-31* gives a mortgage debtor the right to reinstate a trust deed by paying only the defaulted amount within three months of the initial default. Finally, Cannon complied with *Section 1692g* by identifying the defaulted mortgage amount that was the basis of the foreclosure. *Citing Chaudhry v. Gallerizzo, 174 F.3d 394, 406 (4th Cir. 1999)*.

The 10th Circuit noted that the commencement of foreclosure proceedings was intended to encourage Maynard to pay her debt, and in fact, Maynard did reach a pay off settlement with Household. Nevertheless, after framing the issue, the 10th Circuit expressly declined to resolve it, noting that even if otherwise covered by the FDCPA, Cannon’s communications did not actually violate the statute.

III. Interesting Utah Case concerning Foreclosure Attorneys, Original Creditors,

and purchases prior to default.

Kee v. R-G Crown Bank, 656 F.Supp.2d 1348 (D.Utah 2009)² Following a non-judicial foreclosure of his property, borrower brought suit alleging that Defendant's actions in connection with the non-judicial foreclosure of his property violated the Fair Debt Collections Practices Act.

Holding as to Defendants Mona Burton, Katherine N. Hansen, and Holland and Hart.

The Defendants have not acted outside of the procedures of a non-judicial foreclosure in this case and, therefore, are not collecting a debt under the FDCPA. *Id. at 1354.*

Ruling as to Fifth Third Bank: Under *Section 1692a(6)(F)(iii)* of the FDCPA, a loan servicer such as Fifth Third Bank is only a "debt collector" within the meaning of the FDCPA if it acquires the loan after it is in default.

Ruling as to Fannie Mae: The holder of the note, which in this case is Fannie Mae, is not a "debt collector" within the meaning of *section 1692(a)(6)* of the FDCPA because Fannie Mae is not attempting to collect the debt of another, and thus, as a matter of law, the FDCPA allegation against Fannie Mae is also dismissed.

IV. Local cases of Interest.

See Burnett v. Mortgage Electronic Registration Systems, Inc., 2009 WL 3582294 (D.Utah)(James Woodall acting as a Trustee engaged in non-judicial foreclosure is not acting "in connection" with the "collection of [a] debt".)

Huckfeldt v. BAC Home Loans Servicing, LP, 2011 WL 4502036 (D.Colo.) (A non

² Judge Dee V. Benson, presiding

judicial foreclosure does not result in the mortgagor's obligation to pay money. It results in the sale of property subject to a Deed of Trust. That being said, the District Court in Colorado refused to conclude that non-judicial foreclosure activities fall outside the scope of the FDCPA. Rather, the Court concluded that the specific allegations of violations of the FDCPA, where not supported by sufficient evidence to defeat Defendant's Motion for Summary Judgment.

V. Split in the Circuits as to whether non-judicial foreclosure is “debt collection”

Wilson v. Draper & Goldberg, P.L.L.C., 443 F.3d 373, 376 (4th Cir. 2006) The Fourth Circuit came to the conclusion that foreclosure lawyers may come under the general definition of “debt collector” subject to all of the FDCPA requirements as the lawyers, because most foreclosure lawyers frequently settle the foreclosure with a payment of money from a refinancing, a payment of back payments, or a payoff from the homeowner's sale of the home.

The dissent in *Wilson*, argued that the Lawyer Trustee's should have fallen under the exception for fiduciaries. *Wilson v. Draper & Goldberg, P.L.L.C.*, 443 F.3d 373, 379-80 (4th Cir. 2006). The dissent looked at the plain wording of the statute which stated:

“The term [debt collector] does not include-

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (I) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement” 15 U.S.C. 1692a(6).

VI. Lawyers conducting Judicial Foreclosures are debt collectors.

The Fifth Circuit held that an attorney who filed a foreclosure action in Louisiana, and failed to ever provide the FDCPA validation notice, required by 15 USC 1692g violated the FDCPA. *Kaltenbach v. Richards*, 464 F.3d 524 (5th Cir. 2006). The 5th Circuit ruled that party who satisfies § 1692a(6)'s general definition of a “debt collector” is a debt collector for the purposes of the entire FDCPA even when enforcing security interests. *Id. at 529*. While the Fifth Circuit case concerns Judicial Foreclosure, the Fifth Circuit did not think that it mattered, writing as follows:

“Several courts have held that § 1692f(6) is the only section of the statute that regulates the enforcement of security interests. *See Rosado v. Taylor*, 324 F.Supp.2d 917, 924 (N.D.Ind.2004) (holding that enforcement of a security interest is not governed by the FDCPA outside of § 1692f(6)); *Bergs v. Hoover, Bax & Slovacek, L.L.P., No. Civ.A.3:01-CV-1572-L*, 2003 WL 22255679, at 5-6 (N.D.Tex. Sept.24, 2003) (unreported) (same); *Hulse v. Ocwen Fed. Bank, FSB*, 195 F.Supp.2d 1188, 1204 (D.Or.2002) (same); *Heinemann v. Jim Walter Homes, Inc.*, 47 F.Supp.2d 716, 722 (N.D.W.Va.1998), *aff'd*, 173 F.3d 850 (4th Cir.1999) (same). But see *Shapiro & Meinhold v. Zartman*, 823 P.2d 120 (Colo.1992) (en banc) (implicitly holding that enforcement of a security interest is governed by the FDCPA if the enforcer meets the general definition of a debt collector). However, none of their decisions are able to reconcile the fact that § 1692i(a)(1) is directed at persons enforcing security interests with their holdings that only § 1692f was intended to regulate the enforcement of security interests.”

Specifically, the Fifth Circuit cites the Trust Deed foreclosure case, *Hulse v. Owen Fed. Bank, FSB*, 195 F.Supp.2d 1188, 1204 (D.Or.2002) . The Oregon Court ruled that “activity of foreclosing on the property pursuant to a deed of trust is not the collection of

a “debt” within the meaning of the FDCPA.”

The Colorado Supreme Court case of *Shapiro & Meinhold v. Zartman*, 823 P.2d 120 (Colo.1992) is a Judicial Foreclosure case.

VII. Eviction Lawyers Covered?

A. Rent is a debt.

The courts have consistently found that “rent” is a “debt”. For instance, in *Romea v. Heiberger & Associates*, 163 F.3d 11 (2d Cir. 1998), a Tenant brought an FDCPA action against a landlord's law firm, alleging that notice demanding payment of rent arrearage or surrender of rented premises to landlord violated Fair Debt Collection Practices Act (FDCPA). The Second Circuit held that: (1) back rent was “debt” within meaning of FDCPA; (2) three-day rent demand notice, required by New York law as condition precedent to summary eviction proceeding, was a “communication” to collect a debt, within meaning of FDCPA; and (3) attorneys were acting as “debt collectors” for FDCPA purposes.

B. Eviction proceeding, No effort to collect back rent.

But, where there was not even an indirect attempt to use eviction to collect rent, the FDCPA did not apply. *See Bond v. U.S. Bank, N.A.* 2010 WL 1265852 (E.D. Mich., Mar. 29, 2010). U.S. Bank, acting as Trustee, acquired title to real property through a foreclosure auction. Donald Bond was the former owner and current tenant of the

foreclosed property. In the foreclosure action, U.S. Bank did not ask for any money, as the deficiency was discharged in bankruptcy. Thus, the Court concluded that U.S. Bank was not a “debt collector” under the meaning of the FDCPA.

C. Eviction proceeding, attempt to collect a debt owed directly to the management company and the management company acquired the right to the debt before the debt was in default.

The term debt collector does not include:

“any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.” *15 U.S.C. 1692a(6)(F)*

A management company who obtains the right to collect rents at the time the lease is signed by the tenant, is not a “debt collector”, because the “debt” was not in default at the time the management company received the assignment. See *15 U.S.C. 1692a(6)(F)* and *Lamb v. HSC Real Estate, Inc.* 2008 WL 467410 E.D.Wash., 2008.

VI. What about Debt purchasers, Management companies, mortgage services and debt services?

A. Debt Servicing Companies.

Wadlington v. Credit Acceptance Corp., 76 F.3d 103, 106–7 (6th Cir.1996), the Court of Appeals held that an assignee of the plaintiffs' installment contract for a car purchase was not a debt collector because the loan had been assigned prior to default. The

Court made clear, however, that even if the plaintiffs' true creditor remained the car dealership from whom they purchased their car, and the defendant had only obtained the debt as a servicer and not as an assignee, the defendant would still be exempted from the definition of a debt collector under *Section 1692a(6)(F)(iii)*.

B. Debt Buyers after default, who never take any action to collect the debt.

Scally v. Hilco Receivables, LLC, 392 F.Supp.2d 1036, N.D.Ill. 2005

Hilco purchases large amounts of defaulted credit card debt for ten cents on the dollar. For roughly three-quarters of the debt it acquires, Hilco enters into collection agreements with entities unrelated to Hilco or any of its subsidiaries. These entities, which include Defendant MRS, agree to collect or attempt to collect the outstanding debts in return for a contingency fee. In this case, Hilco (through Lake Cook), acquired Scally's bad debt from MBNA Bank. Hilco then referred Scally's account to MRS for collection pursuant to a "Recovery Agreement." The Recovery Agreement gave MRS full and complete authority to take all actions deemed appropriate in the ordinary course of its business including, but not limited to (1) contacting Accountholders (sic), (2) compromising, settling or releasing balances, (3) pursuing arbitration, provided no such arbitration shall be commenced unless HILCO agrees in writing, and (4) using third parties for purposes of skip tracing. Once an account is referred to MRS, Hilco has little contact with debt-holders. Importantly, Hilco does not initiate any contact with debt-holders. In this case, it did not send any letters to Scally, nor did it contact her by telephone. Both parties agree that MRS sent the allegedly infringing communication at issue in this case to Scally and the

other class members. As part of its collection efforts, MRS asks debt-holders to remit payments directly to MRS. MRS holds all funds collected in a trust account for Hilco and reports collection activities to Hilco on a daily, weekly and monthly basis. Hilco will accept payment from debtors, should they contact Hilco and insist upon doing so. Otherwise, Hilco expects that payments will be made to MRS and that MRS will remit payment to it. MRS has authority to endorse and deposit checks made payable to Hilco (or the original debt-holder) in connection with an account. With respect to settling accounts, MRS is authorized under the terms of the Recovery Agreement to accept eighty percent or more of the amount of debt as payment in full. In order to settle at lower amounts, MRS must secure Hilco's approval. Hilco makes no effort to govern the content of the communication between MRS and debt-holders beyond the terms outlined in the Recovery Agreement. Within the agreement, MRS promises that all of its customer contact will comply with applicable law and that MRS will only use Hilco's name in its communications with debtors in a manner approved by Hilco. Scally offers no evidence that Hilco inspected the letter MRS sent to her or otherwise authored or approved the content of the letter.

Ruling: Not a “debt collector” subject to the Fair Debt Collection Practices Act (FDCPA). Fair Debt Collection Practices Act, § 803(6), 15 U.S.C.A. § 1692a(6).

Bradshaw v. Hilco Receivables, LLC, 765 F.Supp.2d 719, D.Md. 2011.

In the *Bradshaw* case, Hilco argued that it is exempt from the licensing requirement because it is a “passive debt buyer” and therefore not covered by the Maryland Licencing statute.

The Maryland Licensing statute states as follows:

“a person must have a license whenever the person does business as a collection agency in the State.” *Md. Code Ann., Bus. Reg., § 7-101, et seq.*

As part of its defense, Hilco relied on a June 20, 2007 letter issued by Kelly Mack (the “Mack Letter”), an employee of the Maryland Department of Labor, Licensing and Regulation (“DLLR”), who wrote, in response to an inquiry made by a trade organization that represents entities that acquire defaulted debt, that where a person “purchases debts in default but is not directly engaged in the collection of these purchased debts,” the person is a “passive debt buyer” and is “not required to obtain a collection agency license.”

The Court ruled that the plain language of the statute, and the obvious intent of the legislature in passing the Maryland licensing statute was to required debt buyer to obtain a license as a Collection Agency. Hilco receiveables had hired collection law firms in Maryland and had filed number lawsuits leading to numerous judgments.

Ruling: The FDCPA prohibits the use of any “false, deceptive, or misleading representation or means in connection with the collection of any debt,” *15 U.S.C. § 1692e*, and provides a non-exhaustive list of conduct that violates the FDCPA, including “[t]he threat to take any action that cannot legally be taken.” *15 U.S.C. § 1692e(5)*. The theory underlying Plaintiffs' claim is that because Maryland law prohibits collection agencies from conducting debt collection in the state without a license, Hilco's noncompliance with the Maryland statute forecloses it from initiating debt collection activities, including litigation. Hilco's violation of the Maryland licensing requirement is a per se violation of *Section 1692e(5)*'s prohibition on threats to take action that cannot legally be taken.

And see LeBlanc v. Unifund CCR Partners, 601 F.3d 1185 (11th Cir. 2010)(Debt buyer

Unifund sent dunning letters to LeBlanc and made phone calls attempting to collect a debt purchased by Unifund. The 11th Circuit ruled that Unifund had threatened to take action that could not legally be taken because collector had failed to register as “out-of-state consumer collection agency” in Florida.

See LVNV Funding, LLC v. Trice, 2011 IL App (1st) 092,773, 952 N.E.2d 1232

Ill.App. 1 Dist., 2011(Matthew Trice used his Citibank credit card to pay for some plumbing. He did not pay Citibank the full amount the plumber charged. Citibank sold its interest in the credit card account to a debt buyer named LVNV Funding LLC. In January 2008, LVNV sued Trice to recover the balance due on the account. On January 15, 2009, after a trial at which Trice represented himself, the trial court entered a judgment in favor of LVNV for \$3,303.90. Trice hired counsel and, on March 3, 2009, Trice's counsel filed a motion to vacate the judgment. In the motion, Trice alleged that LVNV had not registered with the State as a collection agency before it filed the suit against him. According to Trice, LVNV obtained a license to act as a collection agency on August 28, 2008, some months after LVNV filed the lawsuit against Trice, but some months before the court entered a judgment in favor of LVNV. Trice did not include any allegations concerning how he discovered that LVNV had not registered, and he included no other allegations related to his diligence. Trice sought only a finding that LVNV's failure to register rendered void the judgment entered against him on January 15, 2009.

Illinois has a licensing statute which states as follows:

No collection agency shall operate in this State, directly or indirectly engage in the business of collecting, solicit claims for others, * * * exercise the right to collect, or receive payment for another of any account, bill or other indebtedness, without registering under this Act[.]” 225 ILCS 425/4 (West 2008).

A corporation acts as a collection agency when it “[b]uys accounts, bills or other indebtedness [with recourse] and engages in collecting the same.” 225 ILCS 425/3(d) (West 2008). A party who acts as a collection agency without proper registration commits a Class A misdemeanor and must also pay a civil penalty. 225 ILCS 425/4.5, 14, 14b (West 2008). Ruling:

The judgment entered on a complaint filed by an unregistered collection agency is void, and registration of a collection agency subsequent to agency's filing a complaint does not validate a judgment entered on the void complaint.

C. Unlicensed Trustees in Foreclosure actions.

Cox v. ReconTrust Co., N.A., 2011 WL 835893 D.Utah 2011.

ReconTrust was acting as a Trustee for purposes of foreclosing on Utah Deeds of Trust. ReconTrust is a non-depository national bank initiating approximately 4,000 home foreclosures in Utah each year. ReconTrust is neither an attorney or a Title Insurance company with an office in the State of Utah. See Utah Code Section 57-1-21(3). ReconTrust was conducting foreclosure sales in Utah and was not registered to do business under Utah Code 16-10a-1501.

Peni Cox received a Preliminary Injunction in State Court against ReconTrust conducting any foreclosures in the State of Utah. A Notice of Removal was filed with the District Court on May 26, 2010. A Motion to Vacate the Preliminary Injunction was filed June 4, 2010. The Federal Court vacated the Preliminary Injunction and eventually dismissed Ms. Cox's claims.

The case is currently on appeal to the 10th Circuit. The Utah Attorney General has filed an Amicus Curiae brief with the 10th Circuit, supporting Peni Cox's possession. Further, the Attorney General has asserted that the Attorney General of the State of Utah was entitled to receive notice of the challenge pursuant to 28 U.S.C. Section 2403(b) and the Federal Rules of

Civil Procedure 5.1. No notice was provided to the Attorney General. As such the matter should be remanded to the District Court to give the State of Utah an opportunity to be heard.

Hypothetical: Mr and Mrs. Smith obtain a mortgage from Countrywide to purchase their Layton Home in 2005. In 2008, Bank of America purchases Countrywide. The Smith mortgage goes into default in 2009, and after the mortgage goes into default, BOA assigns the Deed of Trust to ReconTrust. ReconTrust commences a foreclosure proceeding against the Smiths, and sends a the Smiths a Notice of Default, as such Notice is described in Title 57 of the Utah Code. ReconTrust does not send the FDCPA notice required by 15 USC 1692g.

Question #1: Is ReconTrust a “debt collector” subject to the provisions of the FDCPA?

Question #2: If ReconTrust is a “debt collector”, then has ReconTrust violated 15 USC 1692e, 1692e(5), and 1692e(10), in a similar manner as Hilco receivables did, in *Bradshaw v. Hilco Receivables*? Is every mortgage foreclosure then Void as opposed to Voidable?

Question #3: Even if ReconTrust is not a “debt collector” subject to most all of the FDCPA, could a case be made that ReconTrust has violated section 1692f(6) and that section 1692f(6) applies to non “debt collectors” enforcing a security interest?

Appendix

15 USC 1692a

As used in this subchapter--

- (1) The term “Commission” means the Federal Trade Commission.
- (2) The term “communication” means the conveying of information regarding a debt directly or indirectly to any person through any medium.
- (3) The term “consumer” means any natural person obligated or allegedly obligated to pay any debt.
- (4) The term “creditor” means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.
- (5) The term “debt” means 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.
- (6) The term “debt collector” means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of *section 1692f(6)* of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The

term does not include--

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

15 USC 1692f

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if--

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

(7) Communicating with a consumer regarding a debt by post card.

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.