Federal Consumer Protection

Body of laws designed to protect the economic back bone of the country, credit.

The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this Act to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.

Consumer Credit Protection Act

- **Truth in lending – 1968** – Assures meaningful disclosure of credit terms (costs of credit) allowing comparison various competing credit terms. It controls typical consumer credit transactions. Mortgages, home equity loans, and home improvement loans are also regulated by the Act.

- **Fair Credit Billing Act – 1974** - Protects consumers from inaccurate billing practices. The law applies to "open end" credit accounts, such as credit cards, and revolving charge accounts - such as department store accounts. The protections afforded by the Act limit a consumer’s liability for erroneous charges and lost and stolen credit cards only if the consumer provides his or her financial institution with timely notice.

- **Equal Credit Opportunity Act** - 1974 - Ensures that consumers are given an equal chance to obtain credit by prohibiting discrimination in credit transactions on the basis of sex, race, religion, marital status or age. It requires notification in writing of a denial of credit with the basis for the denial.

- **Fair Credit Reporting Act** -1977 – Designed to promote accuracy, fairness, and privacy of information in the files of every "consumer reporting agency" (CRA). It requires that credit bureaus use “appropriate and fair procedures” for obtaining, maintaining, and providing information about consumers. It does not create a way to “clean up” someone’s credit, only a procedure to remove erroneous information.

- **Fair Debt Collection Practices Act** – 1977 - details the rules for debt collectors regulates communication with debtors and third parties.
TRUTH IN LENDING ACT (TILA) 15 USC 1601

Applicability
- Credit is offered to a consumer;
- Credit is for personal, household, or family purposes;
- The creditor regularly extends credit to the public; and
- Credit is subject to a finance charge or is repayable by written agreement in more than four installments.

Disclosure What When
- Total sale price, includes the price of the item, interest, or other charges, and any down payment or trade-in value.
- Amount financed, includes the amount borrowed plus any cost of extended warranties.
- Finance charges, the cost of consumer credit as a dollar amount. It includes the costs of the credit transaction (e.g., interest, credit life insurance, discount, and loan origination fees). Not included as finance charges are fees associated with credit applications, title examination, credit reports, escrow payments for taxes and insurance, and attorney's fees.
- Annual percentage rate, The annual percentage rate (APR) is the cost of credit expressed as a yearly percentage rate. The APR includes the total finance charge paid in installments over the term of the loan and then calculates the amount paid each year as a percentage of the amount financed. The APR, which is almost always higher than the base interest rate of the loan, is a uniform true cost of credit designed to allow the consumer to comparison shop for the best credit terms.
- Total of payments, the amount financed plus the finance charge.
- Payment schedule and amount of each payment, each monthly payment amount and the due date.

SoL
One year

Damages
- Actual damages
- Twice the amount of any finance charge in connection with the transaction,
- Open end consumer credit plan/ not secured by real property = twice the amount of any finance charge in connection with the transaction, with a minimum of $ 500 and a maximum of $ 5,000, or such higher amount as may be appropriate in the case of an established pattern or practice of such failures

Defense
that the violation was unintentional due to bona fide error with procedures reasonably adapted to avoid any such error
Std - preponderance of evidence
The Fair Credit Billing Act’s (FCBA) protects consumers from inaccurate billing practices. 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 repaid on a fixed schedule. The protections afforded by the Act limit a consumer’s liability for erroneous charges and lost and stolen credit cards only if the consumer provides his or her financial institution with timely notice. Accordingly, matters covered under the Act should be handled expeditiously.

**DISPUTES** applies only to disputes about "billing errors"

- Unauthorized charges. Federal law limits responsibility for unauthorized charges to $50;
- Charges that list the wrong date or amount;
- Charges for goods and services the consumer 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 the consumer’s current address - provided the creditor receives the change of address, in writing, at least 20 days before the billing period ends; and
- Charges for which the consumer asks for an explanation or written proof of purchase along with a claimed error or request for clarification.

**REQUIREMENTS**

**Consumer Must**
- Write to the creditor at the address for "billing inquiries," only.
- Letter must be received within 60 days after the first bill containing the error.
- The letter should be sent by certified mail, return receipt requested,

**Creditor Must**
- acknowledge the 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 the letter.

**During Investigation**
- Payment may be withheld on the disputed amount (and related charges)
- The consumer must pay the undisputed portion of the bill including finance charges;
- The creditor may not take legal or other action to collect the disputed amount
- The account cannot be closed or restricted;
- The creditor may not report the consumer as delinquent while the bill is in dispute.

** Unsatisfactory Goods**
If purchased with a credit card the consumer can take the same legal actions against the card issuer as the consumer can take under state law against the seller. To take advantage of this protection regarding the quality of goods or services, the consumer must:

**Remedies**
Private Cause of Action; Statutory Damages capped at $5,000 and attorney fees.
It is the purpose of this Title to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this Title.

**Consumer Rights:**
- CRA must give the consumer information in the consumer’s file, and a list of requestors.
- No charge for the report if a person has taken action against the consumer because of information supplied by the CRA, if the consumer requests the report within 60 days of receiving notice of the action.
- One free report every twelve months upon request.
- The report given the consumer is not the same as the report given to CRA subscribers so erroneous information may still affect a consumer’s credit rating without the consumer’s knowledge.

**Creditors Duties**
Disclose negative information in the consumers file
Inform if information has been used against the consumer.

**DISPUTE PROCEDURE**
- Written notification of inaccurate information,
- CRA must investigate the items (usually within 30 days)
- Creditor must review the consumer’s evidence and report its findings to the CRA.
- Creditor must advise national CRAs to which it has provided the data of any error.
- The CRA must give the consumer a written report of the investigation, and a copy of the consumer’s report if the investigation results in any change.
- If the CRA’s investigation does not resolve the dispute, the consumer may add a brief statement to the consumer’s file.

**REMOVAL OF ERRONEOUS INFORMATION**
- A CRA must remove or correct inaccurate or unverified information from its files, usually within 30 days after the consumer disputes it.
- Removal if information outdated information or cannot be verified.

**CRA DISPUTE RESOLUTION ADDRESSES**
Equifax Credit Information Services, Inc  (800) 685-1111
P.O. Box 740241
Atlanta, GA 30374

TransUnion (800) 916-8800
P.O. Box 1000
Chester, PA  19022

Experian (888) 397-3742
P.O. Box 9595
Allen, TX 75013
OUTDATED INFORMATION MAY NOT BE REPORTED
Negative information that is more than seven years old
exceptions:
- bankruptcy information may be reported for 10 years;
- No Time limit
- information about criminal conviction
- in response to an application for a job with a salary of more than $75,000
- application for more than $150,000 worth of credit
- Application for more than $150,000 of life insurance

ACCESS
- As part of a credit transaction involving the consumer.
- To review and collect the consumer’s account.
- For employment purposes.
- Underwriting of insurance for personal, family or household purposes.
- Government agencies for determination of consumer’s eligibility for a license or other governmental benefit.
- In connection with a valuation of, or an assessment of the credit or prepayment risks as associated with an existing credit obligation.
- In connection with a legitimate business need relating to a business transaction initiated by the consumer.

REMEDIES
Private Cause of Action
Statutory damages $5,000
Attorney fees
**EQUAL CREDIT OPPORTUNITY ACT** 15 U.S.C. 1691 12 C.F.R. 202 (Regulation B)  
The Congress finds that there is a need to insure that the various financial institutions and other firms engaged in the extensions of credit exercise their responsibility to make credit available with fairness, impartiality, and without discrimination on the basis of sex or marital status. Economic stabilization would be enhanced and competition among the various financial institutions and other firms engaged in the extension of credit would be strengthened by an absence of discrimination on the basis of sex or marital status, as well as by the informed use of credit which Congress has heretofore sought to promote. It is the purpose of this Act to require that financial institutions and other firms engaged in the extension of credit make that credit equally available to all creditworthy customers without regard to sex or marital status.".

**Prohibitions**

- Discouraging the consumer from applying because of sex, marital status, age, race, national origin, or because the consumer receives public assistance income.
- Inquire about or consider he consumer’s sex, race, national origin or religion
- Ask about a consumer’s marital status
- Request information about a consumer’s spouse, except when the spouse is also applying; the spouse will be allowed to use the account; the consumer is relying on the spouse’s income or on alimony or child support income from a former spouse; or if the consumer resides in a community property state.
- Inquire about a consumer’s plans for having or raising children.
- Refuse to consider public assistance income the same way as other income.
- Refuse to consider regular alimony, child support, or separate maintenance payments. A creditor may ask a consumer to prove that he or she has received this income consistently.

**Consumer Rights**

- Have credit in her birth name (Mary Smith), her first name and her spouse’s last name (Mary Jones), or her first name and a combined last name (Mary Smith-Jones).
- Get credit without a cosigner, if the consumer meets the creditor’s standards.
- Have a cosigner other than a husband or wife, if one is necessary.
- Keep his or her accounts after a change of name, marital status, reaching a certain age, or retiring, unless the creditor has evidence that the consumer is not willing or able to pay.
- Know whether an application was accepted or rejected within 30 days of filing a complete application.
- Know why the application was rejected. The creditor must give notice that tells either the specific reasons for rejection or the right to learn the reasons if the consumer asks within 60 days.

**REMEDIES** The consumer has the following options:

- Private Cause of action
- Statutory damages 1,000
- Attorney fees
FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. 1692

WHAT IS COVERED?
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.” The underlying debt must arise from a "transaction," thus child support, tort claims, and personal taxes are excluded. When debt is incurred for combined consumer and nonconsumer purposes, it is a fact question as to which purpose was the primary reason the debt was incurred. The FDCPA applies to bad check debts, condominium assessment fees, residential rental payments, and other non-credit consumer obligations.

WHO IS COVERED?
• Third-Party Debt Collectors. Any business, the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.
• Attorneys.
• Creditors Using Name of a Third Party. Creditor collecting debts who uses a name indicating that a third party is collecting is covered.

WHO IS NOT COVERED?
Creditors are generally not covered unless they have made themselves “debt collectors”
• Creditor employees, government employees, process servers, "bona fide" consumer credit counselors, and certain fiduciaries, and escrow companies.
• Creditor may be a "debt collector" if it used alias or assumed name to collect its debts, creditor and its affiliated collection agency are deemed to constitute a single economic enterprise, or creditor controlled almost all aspects of agency's debt collection activities).

THE FDCPA MANDATES THREE AREAS OF COLLECTOR COMPLIANCE
• Identifying oneself as a debt collector;
• Advising the debtor of the right to verify and dispute the debt; and
• Refraining from harassment, false representations, and third party communications.

CONTACT PROHIBITED
• At an unusual time or place known or which should be known to be inconvenient. Unless the debt collector has other information, the debt collector can only contact the consumer from 8 AM to 9 PM.
• If the debt collector knows the consumer is represented by counsel with respect to the debt. (Unless the attorney fails to respond in a reasonable time or consents
• At work when the debt collector knows or has reason to know that the employer prohibits the consumer from receiving such communications.

HARASSING OR ABUSIVE BEHAVIOR PROHIBITED
• Use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.
• Obscene or profane language “the natural consequence of which is to abuse the hearer or reader.”
• Repeated or continuous calls.
• Anonymous calls (the debt collector must disclose his employer’s identity).

**DECEPTIVE AND MISLEADING COLLECTION METHODS PROHIBITED**

• Misrepresenting that the debt collector is affiliated with U.S. or any state.
• Misrepresenting the character, amount, or legal status of any debt (default).
• Misrepresenting that a call or letter is from an attorney. (Note: Creditor who falsely uses an attorney’s name becomes a debt collector and violates the FDCPA).
• Misrepresenting that nonpayment will result in arrest or imprisonment or the seizure, garnishment, attachment, or sale of any property.
• Threatening to take any action that cannot be taken legally or that is not intended to be taken.
• Threatening to contact third parties.
• Action constituting the unauthorized practice of law under applicable state laws.
• Filing time-barred collection litigation.
• Threatening collection litigation which is in fact not intended or then authorized by the creditor.
• Suing on debt when the consumer is not in default.

**UNFAIR DEBT COLLECTION PRACTICES**

• Collection of any amount (such as interest or a collection fee) that isn’t either expressly authorized by the agreement creating the debt or permitted by state law. The debt collector may not collect a fee if the contract doesn’t provide for such a fee and state law is silent.
• Unfair use of post-dated checks. Demanding that consumers provide such checks is okay but the debt collector may not deposit post-dated checks before their due dates.
• Suing in improper venue.

**AFFIRMATIVE DISCLOSURE REQUIREMENTS**

In the first written communication with the consumer "the debt collector is attempting to collect a debt that any information obtained will be used for that purpose" and in all others that "the communication is from a debt collector."

In the initial communication or within five days after the initial communication, in writing the following:

- the amount of the debt;
- the name of the creditor to whom the debt is owed;
- a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid; a statement that if the consumer notifies the debt collector in writing within the thirty day period that the dispute the debt, or any portion thereof, is disputed, the debt collector will obtain verification thereof; and a statement that,
- upon the consumer's written request within the thirty day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor. Contradictory messages violate the validation disclosure requirements, for example, demand for payment within a time less than thirty days contradicts thirty-day validation period and is unlawful.

**REMEDIERS  If the consumer disputes in the debt in writing, the debt collector must cease collection efforts until it verifies the debt and mails a response. If the consumer requests, in writing, that the debt collector cease contact, the debt collector may not communicate with the consumer again unless it is only to say there will be no further contact or to notify the consumer that the creditor intends to take some specific action.**