

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

EXAMINATION PROCEDURES

Examination Objectives

- To determine the adequacy of the institution's internal procedures and controls to assure consistent compliance with FDCPA.
- To determine if the institution complies with the requirements of the FDCPA in collecting or attempting to collect third-party consumer debts.
- To determine if the institution conducts adequate due diligence on third-party collection agencies who are hired to collect debts on behalf of the institution, including repossessions or foreclosures.

Examination Procedures

The following procedures are to be completed through interviews with personnel knowledgeable about and directly engaged in the institution's collection activities and through reviews of any written collection procedures, reciprocal collection agreements, collection letters, dunning notices, envelopes, scripts used by collection personnel, validation notices, individual collection files, complaint files, and other relevant records.

1. Determine if the institution is a debt collector under FDCPA.
2. Determine if the institution has established internal procedures and controls to ensure compliance with the FDCPA.
3. If the institution has acted or is acting as a debt collector under the FDCPA, determine if the institution has:
 - a. Communicated with the consumer or third parties in any prohibited manner (15 U.S.C. 1692b and c);
 - b. Furnished the written validation notice within the required time period and otherwise complied with applicable validation requirements (15 U.S.C. 1692g);
 - c. Used any harassing, abusive, unfair, or deceptive collection practice prohibited by FDCPA (15 U.S.C. 1692d, 1692e, 1692f, and 1692j);
 - d. Collected any amount not expressly authorized by the debt instrument creating the debt or by state law (15 U.S.C. 1692f(1));
 - e. Applied all payments received as instructed and, where no instruction was given, applied payments only to undisputed debts (15 U.S.C. 1692h);

- f. Filed suit in an authorized forum if the institution sued to collect the debt (15 U.S.C. 1692i).

Because credit unions frequently hire third-party collection agencies to communicate with delinquent account holders and take other collection actions, credit unions must perform adequate due diligence and monitoring of these parties to ensure they are in compliance with the FDCPA. In addition, credit unions must ensure that their own collection activities do not constitute an Unfair, Deceptive or Abusive Act or Practice under the Dodd-Frank Act, 12 USC Sec. 5531(c).

REFERENCE: 2012 CFPB Examination Manual

Additional Resources

CFPB Bulletin 2013-07, July 10, 2013

Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts

<https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/bulletin-prohibition-practices-collection-consumer-debts/>