

# The CFPB, UDAAP's and the FDCPA

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Who is the  
Consumer Financial  
Protection Bureau?

# By Law

## INTRODUCTION:

Title X, known as the Consumer Financial Protection Act of 2010, establishes the Consumer Financial Protection Bureau (CFPB or Bureau) as an independent agency within the Board of Governors of the Federal Reserve System (Federal Reserve). The CFPB regulates the offering and provision of consumer financial products and services under federal consumer financial laws.

# By Law

## PURPOSE:

CFPB ensures that the federal consumer financial laws are enforced consistently so that consumers may access markets for financial products, and so that these markets are fair, transparent, and competitive. July 21, 2011 was the official date on which the function and authority was transferred from other federal regulatory agencies to the CFPB.

# By Law

## Provisions:

### *Organization of Bureau*

The Bureau is to be headed by a Director (Richard Cordray) appointed by the President and confirmed by the Senate, and is to serve a five-year term. See 12 U.S.C. § 5491 (Dodd-Frank Act § 1011). The Director is required to establish three specific functional units within the Bureau focusing on research, community affairs, and collecting and tracking complaints

# By Law

## Provisions:

Additionally, the Director is required to establish the following four offices: (1) the Office of Fair Lending and Equal Opportunity, charged with oversight and enforcement of federal laws intended to ensure access to credit; (2) the Office of Financial Education, charged with educating consumers on financial decisions;

# By Law

## Provisions:

(3) the Office of Service Member Affairs, charged with developing and implementing initiatives for military service members and their families; and (4) the Office of Financial Protection for Older Americans, charged with facilitating the financial literacy of individuals older than 62 years of age.

Finally, the Director is required to establish a Consumer Advisory Board to advise and consult with the Bureau in the exercise of its functions

# By Law

## Bureau Powers & Authority:

The Bureau has the authority to administer, enforce, and otherwise implement federal consumer financial laws, which includes the power to make rules, issue orders, and issue guidance. The Financial Stability Oversight Council (FSOC) has the power to set aside any of the Bureau's regulations if the FSOC decides that the regulation would put the safety and soundness of the banking system, or the stability of the financial system of the United States, at risk.



# By Law

## Bureau Powers & Authority:

The Bureau is authorized to engage in investigations and request information from covered persons, issue subpoenas or civil investigative demands, conduct hearings and adjudication proceedings, and commence civil actions in federal court seeking any appropriate or equitable relief against any person that violates a federal consumer financial law.

# CFPB, 1<sup>st</sup> Parties and UDAAP's

The CFPB is addressing first-party debt collection practices through its authority under the Consumer Financial Protection Act to prevent unlawful, deceptive and abusive acts and practices.

# CFPB, 1<sup>st</sup> Parties and UDAAP's

The CFPB's growing reliance on its vague Unfair, Deceptive and Abusive Acts or Practices authority continues to cause concern in the credit and collection industry as the CFPB considers proposed rules for debt collection.

Enforcement of Unfair, Deceptive and Abusive Acts or Practices in the credit and collection industry is on the rise, and the Consumer Financial Protection Bureau is increasing its focus on this broad and vague enforcement mechanism.

# CFPB, 1<sup>st</sup> Parties and UDAAP's

In fact, of the more than 40 enforcement matters that the CFPB has made public so far, half have alleged violations of the UDAAP provision of the Dodd-Frank Act, according to a November 2015 ACA seminar on UDAAP and the data available at that time. These actions resulted in restitution to consumers totaling more than \$1.7 billion, as well as civil money penalties totaling more than \$142 billion.

# CFPB, 1<sup>st</sup> Parties and UDAAP's

Since 2013, the CFPB has published two bulletins on UDAAP that provide statutory definitions, non-exhaustive examples of UDAAPs and remind entities that are not subject to the Fair Debt Collection Practices Act, such as first party collectors, that they are nevertheless subject to the CFPB's UDAAP authority.

# CFPB, 1<sup>st</sup> Parties and UDAAP's

As a result, a company must do its best to decipher how to avoid violations by examining the applicable standards for UDAAPs found in the Dodd-Frank Act, evaluating limited CFPB UDAAP guidance and analyzing the ever-growing number of enforcement actions in which UDAAP violations are the centerpiece.

# CFPB, 1<sup>st</sup> Parties and UDAAP's

This lack of clarity creates an enormous amount of angst among CFPB-regulated entities who **have no assurance that they themselves might one day be the subject of a very public and hugely expensive enforcement action** for activity that unbeknownst to them has been deemed a UDAAP by the CFPB.

# CFPB, 1<sup>st</sup> Parties and UDAAP's

Adding to this concern, penalties for a UDAAP violation can be severe, up to \$1 million per day for a knowing violation. Further, because there is also no safe harbor for UDAAP violations, collectors are left to defend themselves by pointing to what they did to try to avoid the UDAAP in the first place.



# CFPB, 1<sup>st</sup> Parties and UDAAP's

UDAAPs are not an entirely new concept in the collection industry. The Federal Trade Commission Act, enforced by the Federal Trade Commission for many years, includes a section prohibiting “unfair or deceptive acts or practices.” The CFPB, which is part of the Dodd-Frank Wall Street Reform and Consumer Protection Act and which created the CFPB, incorporated the FTC Act’s concept of unfair or deceptive acts and practices, and added the term “abusive” to the previously existing standards.

# CFPB, 1<sup>st</sup> Parties and UDAAP's

By design, UDAAP laws can cover a broad range of conduct. The open-ended nature of these laws means that many practices that might not be specifically addressed in other areas of the law could be prohibited if they are deemed to be “unfair, deceptive or abusive.” Conversely, the broad scope of UDAAP laws also means that conduct specifically prohibited under an existing law such as the Fair Debt Collection Practices Act may also be considered a UDAAP.

# UDAAP's

## Unfair, Deceptive, or Abusive Acts or Practices

The Act also provides CFPB with rule-making authority and, with respect to entities within its jurisdiction, enforcement authority to prevent unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. In addition, CFPB has supervisory authority for detecting and assessing risks to consumers and to markets for consumer financial products and services.

# UDAAP's

## Unfair, Deceptive, or Abusive Acts or Practices

Unfair, deceptive, or abusive acts and practices (UDAAPs) can cause significant financial injury to consumers, erode consumer confidence, and undermine the financial marketplace. **Under the Dodd-Frank Act, it is unlawful for any provider of consumer financial products or services or a service provider to engage in any unfair, deceptive or abusive act or practice.**

# UDAAP's

## Unfair Acts or Practices

### AN ACT OR PRACTICE IS **UNFAIR** WHEN:

- It causes or is likely to **cause substantial injury** to consumers;
- The injury is **not reasonably avoidable** by consumers; and
- The injury is **not outweighed by countervailing benefits** to consumers or to competition.

# UDAAP's

## Unfair Acts or Practices

A “substantial injury” typically takes the form of monetary harm, such as fees or costs paid by consumers because of the unfair act or practice. However, **the injury does not have to be monetary**. Although emotional impact and other subjective types of harm will not ordinarily amount to substantial injury, **in certain circumstances emotional impacts may amount to or contribute to substantial injury**. In addition, **actual injury is not required; a significant risk of concrete harm is sufficient**.

# UDAAP's

## Unfair Acts or Practices

An injury is not reasonably avoidable by consumers when an act or practice interferes with or hinders a consumer's ability to make informed decisions or take action to avoid that injury. Injury caused by transactions that occur without a consumer's knowledge or consent is not reasonably avoidable. Injuries that can only be avoided by spending large amounts of money or other significant resources also may not be reasonably avoidable. Finally, an act or practice is not unfair if the injury it causes or is likely to cause is outweighed by its consumer or competitive benefits.

# UDAAP's

## AN ACT OR PRACTICE IS **DECEPTIVE** WHEN:

- The act or practice **misleads or is likely to mislead** the consumer;
- The **consumer's interpretation is reasonable** under the circumstances; and
- **The misleading act or practice is material.**



# UDAAP's

## AN ACT OR PRACTICE IS DECEPTIVE WHEN:

- There must be a representation, **omission**, act, or practice that misleads or is likely to mislead the consumer.
- **The representation, omission, act, or practice must be considered from the perspective of the reasonable consumer.**
-

# UDAAP's

## AN ACT OR PRACTICE IS DECEPTIVE WHEN:

To determine whether an act or practice has actually misled or is likely to mislead a consumer, the totality of the circumstances is considered. Deceptive acts or practices can take the form of a representation or omission. The Bureau also looks at implied representations, including any implications that statements about the consumer's debt can be supported. Ensuring that claims are supported before they are made will minimize the risk of omitting material information and/or making false statements that could mislead consumers.

# UDAAP's

## AN ACT OR PRACTICE IS **ABUSIVE** WHEN IT:

- Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
- Takes unreasonable advantage of:
  - A consumer's lack of understanding of the material risks, costs, or conditions of the product or service;
  - A consumer's inability to protect his or her interests in selecting or using a consumer financial product or service; or
  - A consumer's reasonable reliance on a covered person to act in his or her interests.

# UDAAP's

## **AN ACT OR PRACTICE IS ABUSIVE WHEN IT:**

It is important to note that, although abusive acts or practices may also be unfair or deceptive, each of these prohibitions are separate and distinct, and are governed by separate legal standards.

# UDAAP's

## Examples of Unfair, Deceptive and/or Abusive Acts or Practices

Depending on the facts and circumstances, the following non-exhaustive list of examples of conduct related to the collection of consumer debt could constitute UDAAPs. Accordingly, the Bureau will be watching these practices closely.

# UDAAP's

## Examples of Unfair, Deceptive and/or Abusive Acts or Practices

- 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 that the consumer submitted on time and then charging late fees to that consumer.
- Taking possession of property without the legal right to do so.

# UDAAP's

## Examples of Unfair, Deceptive and/or Abusive Acts or Practices

- Revealing the consumer's debt, without the consumer's consent, to the consumer's employer and/or co-workers.
- Falsely representing the character, amount, or legal status of the debt.
- Misrepresenting that a debt collection communication is from an attorney.
- Misrepresenting that a communication is from a government source or that the source of the communication is affiliated with the government.

# UDAAP's

## Examples of Unfair, Deceptive and/or Abusive Acts or Practices

In 2014, the CFPB filed an action against a payday lender. The company was collecting its own debts and, as such, was not subject to the FDCPA. The CFPB alleged the creditor engaged in unfair, deceptive and abusive acts and practices. Many of the claims made against the company were strikingly similar to practices specifically prohibited by the FDCPA. For example, the CFPB alleged the company made excessive calls to consumers' home, work and cellular telephone numbers; continued to call consumers at work after being told that such calls were prohibited; and continued to call consumers directly after being told that they were represented by counsel. The CFPB also alleged that the payday lender disclosed the existence of consumer debts to inappropriate third parties.



# UDAAP's

Through regulatory guidance and enforcement actions, **the CFPB and FTC are demonstrating that first-party debt collection practices will be held to many of the standards contained in the FDCPA. First-party debt collectors should review and update their policies** and procedures to consider conduct prohibited by the FDCPA—paying **special attention to oral and written communications** with consumers, third-party communications, representations regarding consumer reports, handling of payments, settlement offers and threats or litigation.

# UDAAP's

When drafting policies, **companies can rely on the CFPB's exam manual and UDAAPs bulletin for guidance.** Aside from UDAAP concerns, creditors should also be aware that many state debt collection practices laws specifically apply to creditors. By taking steps now, companies can protect themselves from unwanted UDAAP claims associated with first-party debt collection efforts.

# UDAAP's

Next, according to the CFPB's examination manual (page 34), all supervised entities must develop and maintain a compliance management system (CMS) that is integrated into the entity's framework for product design, delivery, and administration. Starting from the top, the CFPB expects a company's board and management to exercise oversight over the company's operations and to ensure that sufficient financial and staff resources are allocated to compliance efforts.

# UDAAP's

To be effective, a CMS should address how a lender monitors for, and responds to, consumer complaints and inquiries. The CFPB has stated that consumer complaint information should be organized, retained, and used as part of a company's operations. Further, a creditor should investigate consumer complaints related to its lending and collection practices and take prompt corrective action to address such complaints or any other indications of systemic weaknesses that pose a risk to consumers.

# UDAAP's

Finally, the CFPB has emphasized that regulated entities should monitor their business relationships with service providers to ensure compliance with federal financial and consumer protection laws. Any first-party creditor that works with third-party collectors should conduct appropriate due diligence on their business partners and monitor them for compliance with applicable consumer protection laws and regulations.

# UDAAP's and the FDCPA

Recent enforcement actions by the CFPB and FTC have used the regulators' UDAAP authority to prohibit certain debt collection practices used by creditors. Many of these UDAAP claims involved conduct specifically prohibited by the FDCPA.

Though first-party debt collectors may not be directly subject to the FDCPA, if a first party's debt collection practice would violate the FDCPA, such a practice may constitute a UDAAP.

# FDCPA

## § 802. Congressional findings and declarations of **purpose**

### **(a) Abusive practices**

There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

# FDCPA

## § 804. Acquisition of location information

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall --

- (1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;
- (2) not state that such consumer owes any debt;
- (3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;



# FDCPA

## § 804. Acquisition of location information

- (4) not communicate by post card;
- (5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and
- (6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

# FDCPA

## § 805. Communication in connection with debt collection

### **(a) Communication with the consumer generally**

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt --

- (1) **at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer.** In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location;

# FDCPA

## § 805. Communication in connection with debt collection

- (2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or
- (3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

# FDCPA

## § 805. Communication in connection with debt collection

### (b) Communication with third parties

Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

# FDCPA

## § 805. Communication in connection with debt collection

### (c) Ceasing communication

If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except --

- (1) to advise the consumer that the debt collector's further efforts are being terminated;

# FDCPA

## § 805. Communication in connection with debt collection

- (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or
- (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

### (d) “Consumer” defined

For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

# FDCPA

## § 806. Harassment or abuse

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.
- (2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.
- (3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 1681a(f) or 1681b(3)1 of this title.

# FDCPA

## § 806. Harassment or abuse

- (4) The advertisement for sale of any debt to coerce payment of the debt.
- (5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
- (6) Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity.



# FDCPA

## § 807. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.
- (2) **The false representation of --**
  - (A) **the character, amount, or legal status of any debt; or**
  - (B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

# FDCPA

## § 807. False or misleading representations

- (3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.
- (4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.
- (5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

# FDCPA

## § 807. False or misleading representations

- 6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to --
  - (A) lose any claim or defense to payment of the debt; or
  - (B) become subject to any practice prohibited by this subchapter.
  
- (7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.
  
- (8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

# FDCPA

## § 807. False or misleading representations

- (9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.
- (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.
- (11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

# FDCPA

## § 807. False or misleading representations

- (12) The false representation or implication that accounts have been turned over to innocent purchasers for value.
- (13) The false representation or implication that documents are legal process.
- (14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.
- (15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.
- (16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 1681a(f) of this title.

# FDCPA

## § 808. Unfair practices

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.

# FDCPA

## § 808. Unfair practices

- (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.

# FDCPA

## § 808. Unfair practices

- (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.



# FDCPA

## § 809. Validation of debts

### (a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing --

- (1) the amount of the debt;\
- (2) the name of the creditor to whom the debt is owed;
- (3) 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 by the debt collector;
- (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- (5) 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.

# FDCPA

## § 809. Validation of debts

### (b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, **the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.** Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. **Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.**

# FDCPA

## § 809. Validation of debts

### (c) Admission of liability

The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

### (d) Legal pleadings

A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).

### (e) Notice provisions

The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by title 26, title V of Gramm-Leach-Bliley Act [15 U.S.C. 6801 et seq.], or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

# FDCPA

## § 810. Multiple debts

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

# FDCPA

## Litigation

8           7. Upon information and belief, within one year prior to the filing of this  
9  
10 complaint, Defendant, in connection with the collection of the alleged debt,  
11 communicated with secretary at Plaintiff's school, who is not a co-signer on the  
12 alleged debt, and the communication was not in a manner covered by §1692b of  
13 the FDCPA.

3           12. The natural consequences of Defendant's statements and actions were to  
4 unjustly condemn and vilify Plaintiff for her non-payment of the debt she allegedly  
5 owed.  
6

7           13. The natural consequences of Defendant's statements and actions were to  
8 produce an unpleasant and/or hostile situation between Defendant and Plaintiff.  
9

10           14. Defendant utilized unfair and unconscionable means to collect on  
11 Plaintiff's alleged debt by lying to and misleading Plaintiff.

### *V. FIRST CLAIM FOR RELIEF*

# FDCPA

## Litigation

This letter is in response to your letter dated September 19, 2014 on the above referenced account and that I am formally disputing the entire amount of the loan on the basis that this loan violates the Dodd-Frank Wall Street Reform and Consumer Protection Act (“CFPB”) on the basis of the following:

1. Mr. [REDACTED] was unreasonably pressured into a predatory loan by the financial aid staff at [REDACTED] University.
2. None of the credits financed are transferable due the unfair, unconscionable and illegal expulsion of our client from the nursing program.
3. [REDACTED] University made false representations to our client that he relied on to his detriment prior to the origination of this loan.
4. The above loan was likely to fail on the basis that once [REDACTED] University wrongfully expelled my client from the nursing program then he would have no foreseeable way of repaying this loan.

Accordingly you have seven business days to respond to this letter or I will be filing a lawsuit based on the above predatory lending practices in federal court which will include rescission, statutory damages, attorney fees and costs.

Your anticipated cooperation is appreciated.

# FDCPA

## Possible Violations

Telling a person that a Federal Perkins loan is non-dischargeable through bankruptcy

Your billing servicers letter tells your borrower their account is going to go to a collection agency and you withhold that action regularly or without cause

# FDCPA

## Possible Violations

Your billing service final demand Perkins letter states their loan is in default but you follow with a letter stating that their loan is delinquent

You tell your borrower in haste “I may just have to send your account to collection agency” to encourage them to pay



# FDCPA

## Possible Violations

You call of a third-party and give a misleading reason as to the purpose of your call such as "oh it's nothing I just need to speak with him"

If calling a consumers parent and the parent divulges to you sensitive information about the account and you intimate to that parent that the borrower is not doing themselves any favors by not calling and that you can help them

# FDCPA

## Possible Violations

You tell a consumer that an account referred to a collection agency could damage their credit

Do you speak with your borrower about their account at your window?

Conclusion

Discussion / Questions