

# How Private Is My Credit Report?

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**Note:** Congress recently enacted the Fair and Accurate Credit Transactions Act of 2003 (FACTA) into law, which will amend the Fair Credit Reporting Act (FCRA).

The National Consumer Law Center (NCLC) and Consumers' Union have analyses of the how FACTA will change the FCRA. See:

[www.consumerlaw.org/initiatives/facta/nclc\\_analysis.shtml](http://www.consumerlaw.org/initiatives/facta/nclc_analysis.shtml)

[www.consumersunion.org/pub/core\\_financial\\_services/000745.html](http://www.consumersunion.org/pub/core_financial_services/000745.html)

Please refer to these analyses until this fact sheet is updated to incorporate the recent changes. We have additional information about FACTA at: [www.privacyrights.org/califpriv.htm](http://www.privacyrights.org/califpriv.htm)

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Credit reports are a gold mine of information about consumers. They contain Social Security number, date of birth, current and previous addresses, telephone number (including unlisted numbers), credit payment status, employment, even legal information. Ordering your credit report once a year and knowing your credit reporting rights are among the most important steps you can take to safeguard your privacy.

The federal Fair Credit Reporting Act (FCRA) as well as state laws restrict who has access to your sensitive credit information and what uses can be made of it. These federal and state laws also set the standards for the operation of credit reporting agencies, called "CRAs" or "credit bureaus." The CRAs have also adopted voluntary guidelines to improve consumer services.

## **What is in my credit report?**

Your credit report is actually a credit history. It is created by data about you from many different sources. Companies that have granted you credit make regular reports about your accounts to the three main CRAs: Equifax, Experian (formerly TRW), and Trans Union. If you are late in making payments, those to whom you owe money such as utilities, hospitals, landlords and others may report this information to the CRA. Your bank may inform the CRA if you overdraw your account or do not make credit card, auto loans, or mortgage payments on time. Your credit report may also contain information about delinquent child support payments. The FCRA allows CRAs to report records of convictions of crime. However, it is not the practice of any of the three main CRAs to report criminal convictions on credit reports. Such information may, however, be reported in

connection with an employer background check.

In addition, your credit report contains your name and any name variations, your address, and previous addresses, telephone number, Social Security number, year and month of birth, and employment information. Information in your report also includes matters of public record such as civil judgments, tax liens and bankruptcies. Because you have the right to know who has inquired about your credit file or has requested your report over the last six months, any copy of the report you receive must also include the identity of all such inquiries. Inquiries related to pre-approved offers, as well as your own inquiries, are not available to credit grantors. However, they are included in credit reports that you order for yourself.

### **Can a credit reporting agency deny my application for credit? How do credit scores affect my application?**

CRA's do not make decisions regarding a consumer's creditworthiness. Rather, the CRA compiles reports of what your file contains and passes that along to the potential credit grantor.

Credit decisions are, in fact, generally made based upon a number of factors that comprise a "score." Inquiries made in connection with your applications for credit may also be a factor in your score. If, for example, you have applied for several credit cards or loans in a short period of time, this may result in a lower score. Inquiries made in connection with pre-approved credit offers or those you make yourself should not result in a reduced score.

The practice of credit scoring is widespread and growing. Until recently, consumers have seldom gained access to their credit score and have not been able to learn the factors that went into the scoring. But a new law in California gives mortgage applicants a right to see their credit score (California Civil Code 1785.10, 1785.15-1780.20, SB 1607 in the 2000 legislative session). And the credit industry is voluntarily loosening its grip on the credit score because of legislative and marketplace pressures. To learn more about the topic of credit scoring, see the Federal Trade Commission's (FTC) information at [www.ftc.gov/bcp/online/pubs/credit/scoring.htm](http://www.ftc.gov/bcp/online/pubs/credit/scoring.htm). Additional information can be found at the Fair, Isaac and Co. (FICO) web site ([www.fairisaac.com](http://www.fairisaac.com)). FICO is the leading developer of scoring methodology. The credit score is often called a "FICO."

### **Is there anything that cannot be in my credit report? How long can information be reported?**

Certain pieces of personal information cannot be in your credit report:

- Medical information (unless you give your consent).
- Bankruptcy remains on your credit report for ten years. The only exception is a Chapter 13 bankruptcy that requires you to make repayments. It remains on your report for seven years.
- Debts (including delinquent child support payments) that are more than seven years old.
- For California residents, records of arrest, information, or misdemeanor complaints must be removed after seven years. But under federal law, records of criminal convictions may remain on a credit report indefinitely.
- Age, marital status, or race (if the request is from a current or prospective employer).

Certain kinds of information may remain on your report indefinitely. If, for example, you are applying for credit, insurance or employment above the dollar limits noted below, information can be reported beyond the usual seven to ten year deadlines.

- A credit transaction involving, or which may be expected to involve, an amount of \$150,000 or more.
- Information about a job with a salary of more than \$75,000.
- An application for credit or life insurance for more than \$150,000.
- Tax liens that are not paid.

For additional information on the length of time that negative information can remain on your credit report, read the "Ask Max" section of the Experian web site, [www.experian.com/ask\\_max/deleting\\_information.html](http://www.experian.com/ask_max/deleting_information.html).

### **Who has access to my report?**

Anyone with a "legitimate business need" can gain access to your credit history, including:

- Those considering granting you credit.
- Landlords.
- Insurance companies.
- Employers and potential employers (but only with your consent).
- Companies with which you have a credit account for account monitoring purposes.
- Those considering your application for a government license or benefit if the agency is required to consider your financial status.
- A state or local child support enforcement agency.
- Any government agency (limited usually to your name, address,

former addresses, current and former employers).

Generally, only an employer or prospective employer needs your written consent to obtain a report. An exception is Vermont where any user needs your oral or written consent. In practice, most potential creditors ask for your permission to review your report. Your permission is not required when inquiries are made in connection with a pre-approved credit offer.

### **Can I find out what is in my credit report?**

Absolutely. Your right of access is mandated by federal and state laws. You may obtain a copy of your report by writing or calling the three CRAs. In addition, Experian and Equifax now offer online access to credit information. Ordinarily, there is a charge of \$8.00 - \$9.00 in most states for your credit report. The charge is \$8.00 if you live in California and free if you live in Colorado, Georgia, Maryland, Massachusetts, New Jersey or Vermont.

There are certain times when you are entitled to a copy of your report free, no matter where you live. In the event of an adverse decision related to your employment, the employer is required to give you a copy of your report. Otherwise, the free report should be requested from the CRA. You are entitled to a free credit report:

- If you have been denied credit (you must request a copy within 60 days).
- If you are unemployed and intend to apply for employment in the next 60 days.
- If you are on public welfare assistance.
- If you have reason to believe your file contains inaccurate information due to fraud.
- If an adverse decision related to your employment has been made based in whole or in part on information contained in the report.
- If your report has been revised based upon an investigation you request.

To get a copy of your report you will have to give the CRA certain information. The information you need to provide may vary slightly, depending on the CRA you contact.

- Full name (and if a Jr., Sr., or II)
- Social Security number
- Driver's license information
- Current address and your address within the last five years
- Date of birth
- Signature

- Home telephone number
- Employer

For a copy of your report write, call, or connect online with:

Equifax, Inc.  
P.O. Box 740241  
Atlanta, GA 30374

(800) 685-1111  
[www.equifax.com](http://www.equifax.com)

Experian  
National Consumer  
Assistance  
Box 2104  
Allen, TX 75013-2104  
(888) 397-3742  
[www.experian.com](http://www.experian.com)

Trans Union LLC  
Consumer Disclosure C  
P.O. Box 1000  
Chester, PA 19022  
(800) 888-4213  
[www.transunion.com](http://www.transunion.com)

You may also obtain a copy of your credit report from companies who contract with the CRAs to sell their products. Many of these products are available on the Internet. Some companies sell a merged version of all three reports. They also provide credit monitoring services that alert you to activity on your report, such as any new credit accounts, the placement of negative information, inquiries from creditors, and so on. To find such companies, use an Internet search engine and look for "credit reports" and "credit monitoring." Be careful to examine these companies and their offers carefully. You will be asked to disclose sensitive personal information in order to obtain your report. Do your homework before signing on the dotted line. And do not fall for the promises of "credit repair services" and "credit doctors" who advertise on television and on the Internet. The vast majority of such services are ineffective, even illegal. Additional information on credit repair services is provided below.

### **How will I know if there is negative information in my report?**

The best way to determine if you have negative information in your credit report is to order a copy and check it carefully. For a thorough review, you should check with all three CRAs since there may be some variations in the file each CRA maintains on you. This should be done at least once a year. Because the crime of identity theft is on the rise, we recommend that you check at least one of your credit reports each six months.

You should also check your credit report when you know it is going to be used to make important decisions, such as applying for an automobile or home loan, renting an apartment or applying for a job. Reports should be ordered at least one to two months before you apply for credit or intend to rent. At these crucial times, you do not want to be surprised to find that your report contains negative information, especially if that information is

inaccurate.

A creditor has the duty to report only accurate, complete and updated information to a CRA. For example, if you close an account voluntarily, your creditor must report this fact in order to distinguish it from an account that is closed for nonpayment. If you disagree with a creditor's report of negative information, the creditor must put a notice of that dispute in your file before reporting to the CRA.

### **What can I do if there are errors in my report?**

There is no denying that errors can and do appear in credit reports. The July 2000 issue of *Consumer Reports* cited a study where more than 50% of the credit reports checked contained errors.

There are two main reasons errors may appear on your credit report. One is when you have been mistaken for another person with a similar name and their information ends up in your file. The other more serious cause of error is fraud. Someone may have intentionally gained access to your personal information and obtained credit in your name. Instances of identity theft are increasing. See PRC Fact Sheet No. 17, "Coping with Identity Theft" [www.privacyrights.org/FS/fs17-it.htm](http://www.privacyrights.org/FS/fs17-it.htm) and Fact Sheet 17a, "Identity Theft: What to Do if It Happens to You" [www.privacyrights.org/FS/fs17a.htm](http://www.privacyrights.org/FS/fs17a.htm).

Both state and federal laws provide you with the right to have errors corrected. Credit bureaus are regulated under the California Consumer Credit Reporting Agencies Act (California Civil Code section 1785 et seq.), the laws of other states, and the federal Fair Credit Reporting Act (15 USC 1681 et seq.). For information on the law in your state, contact your state's consumer protection bureau or office of the Attorney General. National credit bureaus must have a toll-free number so you can contact them with your questions. Also, credit reports must provide an address to request an investigation of inaccurate information.

Once you have notified a CRA of your dispute, both federal and California law allow 30 business days for an investigation. The bureau must consider all the relevant evidence you give it, and errors must be corrected. If the CRA cannot verify negative information, it must be deleted from your file. You are entitled to receive a free copy of your corrected report. You may ask the credit bureau to send a corrected report to anyone who has requested your file in the past six months, as well as to anyone who has requested it in the last two years in relation to employment.

If you disagree with the result of the CRA's investigation, you have the right to submit a 100-word explanation. The credit bureau must include the explanation in your file although the negative information will not be

removed.

Some consumers who have had errors corrected find the incorrect information reappears in their files at a later date. Both federal and California laws require credit bureaus to notify the consumer within five days of reinserting information. Negative information cannot be reinserted into your file unless the credit bureau takes the added step of having the source of the information certify that it is complete and accurate. Credit bureaus must provide the subject of the report with a toll-free number to dispute the reinsertion and the opportunity to include a dispute statement. However, even if you have had errors in your report corrected, it is wise to periodically check your credit report to make sure the errors do not reappear.

### **Can I have negative information deleted if the entry is not an error?**

After seven years, negative information in your report should automatically be deleted. Under federal as well as California law, the seven years begins 180 days from the date of the original delinquency. A Chapter 7 bankruptcy should be deleted after 10 years from the filing date. A Chapter 13 bankruptcy, which includes some debt repayment terms, remains on your credit report for seven years. Otherwise, negative information will remain in your file for the period allowed by law. However, you may include in your 100-word explanation any extraordinary circumstances that led to the negative information, such the loss of a job or illness.

Companies or individuals promising quick fixes are almost always fraudulent. The important thing to remember is that no one can have accurate information removed from your credit file. The law offers some small protection to consumers who deal with so-called "credit doctors" or "credit repair clinics." Such companies are prohibited from charging a fee before completing a promised service.

A better alternative for help with re-establishing good credit is to contact a member agency of the National Foundation for Consumer Credit, such as the Consumer Credit Counseling Service. These nonprofit groups have offices in most cities. To find the office nearest you, call or write:

National Foundation for Consumer Credit, Inc. (800) 388-2227  
8611 Second Avenue, Suite 100 [www.nfcc.org](http://www.nfcc.org)  
Silver Spring, MD 20910

Beware of other credit repair services. Generally they promise a lot, charge a lot and, deliver little. For more information about credit repair services see [www.ftc.gov/bcp/menu-credit.htm](http://www.ftc.gov/bcp/menu-credit.htm)

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### **Can the information in my credit file be used for any other purposes?**

Yes. The practice of generating and selling lists for use in "pre-approved" credit and insurance offers is allowed by law. Trans Union, Experian and Equifax all engage in selling lists of consumers who meet certain criteria in order to receive a "firm" offer of credit or insurance. This is the source of the many pre-approved credit offers most consumers receive in the mail. "Pre-approved" and so-called "firm" offers of credit, however, can be somewhat misleading. A creditor may legally look at your report before making the offer. If you respond, the creditor may again access your report before you are actually granted credit. They can deny your credit application at that time. This is explained in the fine print on the pre-approved offer.

The law does not allow CRAs to compile and sell information *from credit reports* for the purpose of direct marketing. Although CRAs have engaged in this practice in the past, the Federal Trade Commission, on March 1, 2000, ruled that Trans Union violated the FCRA by the sale of personal credit information for target marketing purposes. To read the FTC's full opinion, see [www.ftc.gov/opa/2000/03/transunion.htm](http://www.ftc.gov/opa/2000/03/transunion.htm). Trans Union has appealed the FTC's decision and the matter is now under review in federal court. Equifax states it does not sell lists used for direct or target marketing. Experian, on the other hand, sells lists of consumers to marketers derived from consumer surveys, demographics sources, and public records. Experian states that it does not sell information obtained directly from credit reports for marketing purposes. See [www.experian.com/directmktg/lists.html](http://www.experian.com/directmktg/lists.html).

You can remove your name from any list compiled by a CRA, whether the list is for pre-approved credit offers or direct marketing. To "opt-out," that is, to remove your name from mailing lists compiled by credit bureaus, call the toll-free number all CRAs are required by law to maintain for this purpose: (888) 5OPTOUT or (888) 567-8688. This phone number can be used to remove your name from the list of *all three* CRAs. You may also write to the CRA, and the CRA may also provide an online means for opting-out.

Equifax  
Options  
P.O. Box 740123  
Atlanta, GA 30374-0123  
[www.equifax.com](http://www.equifax.com)

Experian  
Consumer Opt Out  
P.O. Box 919  
Allen, TX 75013  
[www.experian.com](http://www.experian.com)

Trans Union  
Name Removal Option  
P.O. Box 97328  
Jackson, MS 39288-7328  
[www.transunion.com](http://www.transunion.com)

The 1997 amendments to the FCRA allow a subsidiary of a bank holding company to share its customers' credit reports and information from credit, employment, or insurance applications with other affiliates of that company.



employment, or insurance applications with other affiliates of that company. The 1997 amendments to the FCRA give you a right to opt-out of the sharing of affiliate information. Look for opt-out instructions in the fine print of your credit card bills and bank statements. You will be provided with an address to contact to alert financial services companies of your opt-out preferences. The FCRA amendments require that if an adverse action is taken based on affiliate-shared information, you are to be notified. The consumer organization U.S. PIRG ([www.pirg.org](http://www.pirg.org)) states that affiliate sharing is among the most controversial changes to the FCRA. It could result in the establishment of bank subsidiaries that act like credit bureaus but are exempt from the act.

A loophole in the FCRA enables the credit bureaus to sell the "directory information" from credit reports, called "credit headers." This information includes name, address, previous addresses, telephone number, date of birth, and Social Security number. The FCRA's opt-out provision that applies to pre-approved offers of credit does *not* apply to credit headers. You are not able to opt-out of the sale of your credit header information by the CRAs. This information is sold to many information brokers who in turn sell it for a variety of investigative purposes. The sale of credit headers is highly controversial. Several bills have been introduced in Congress to prohibit the sale of headers, or at the very least to restrict the sale of Social Security numbers, which are contained in credit headers.

### **What can I do if my rights under the FCRA have been violated? Where can I complain?**

You may sue a CRA or a company that provides data to a CRA in federal or state court. If you win, you may be entitled to recover an amount for damages you have actually incurred or a maximum of \$1,000, whichever is greater. You may also recover court costs and attorney fees.

In addition to filing your own lawsuit, you may complain to the FTC or your state Attorney General's Office. Although government agencies do not represent individual citizens, agencies charged with enforcing laws such as the FCRA do investigate reported violations. In most cases, an agency's primary source of information is complaints from the public.

While the FCRA is generally enforced on the federal level by the FTC, compliance by those who use or furnish information to a CRA may be enforced by other federal agencies such as the Federal Deposit Insurance Corporation and the Comptroller of the Currency. Complaints of violations of the FCRA may also be filed with those agencies. Other federal agencies with authority to enforce the FCRA can be found at the end of this fact sheet.

**To summarize your credit reporting rights, you have the right to:**

- Obtain a copy of your credit report (sometimes free).
- Know who has received a copy of your report.
- Dispute inaccurate information.
- Even if negative information is included, to explain the circumstances.
- "Opt-out" to prevent credit bureaus from using your information for marketing.
- Complain to the appropriate government agency or file a lawsuit.

**How does an investigative consumer report differ from a credit report?**

Some credit reporting agencies and investigation companies compile what is known as "investigative consumer reports." Such reports are covered under the FCRA and laws in many states. An investigative consumer report can only be used in limited circumstances including employment background checks, insurance, and rental housing decisions. An investigative consumer report does not contain information about your credit record that is obtained directly from a creditor or from you. For example, an investigative consumer report should not contain information about a late payment. This type of report cannot be used to grant credit.

Investigative reports can contain information on your character, reputation, personal characteristics and life style. This information may be gathered through personal interviews with neighbors, friends, associates or acquaintances, as well as a search of public documents such as property and court records.

Because the information in these reports is so detailed and may be sensitive, both federal (FCRA) and state laws impose stricter regulations on CRAs and other investigators that compile investigative reports (federal FCRA, 15 USC 1681d sections 604, 606, and 615; California Civil Code 1786 et seq.). Federal law requires the requester of an investigative consumer report for employment purposes to obtain permission to conduct the report. An exception would be, for example, if an employee were being investigated for possible criminal activity. If the information obtained in the report is used by the employer to make a negative hiring decision, the employer must give the applicant a copy of the report. You have the same rights to correct and dispute inaccurate information in an investigative report as you have in a credit report.

If you want more information on investigative consumer reports used for employment purposes, see [www.ftc.gov/bcp/online/pubs/buspubs/credempl.htm](http://www.ftc.gov/bcp/online/pubs/buspubs/credempl.htm). See also PRC Fact Sheet 16, "Employment Background Checks: A Jobseeker's Guide,"

[www.privacyrights.org/FS/fs16bck.htm](http://www.privacyrights.org/FS/fs16bck.htm).

## FOR MORE INFORMATION

### General information:

The federal government agency that oversees the credit reporting agencies is the Federal Trade Commission (FTC). It has developed several informative brochures on credit-related topics. If you have a complaint about a credit bureau, you may report to the FTC online, by mail, or by calling the toll-free number.

Federal Trade Commission  
Consumer Response Center  
600 Pennsylvania Ave. N.W.  
Washington, D.C. 20580

(877) FTC-HELP (877-382-435)  
TDD (202) 326-2502  
[www.ftc.gov](http://www.ftc.gov)

The San Francisco-based nonprofit organization Consumer Action provides numerous brochures in several languages on credit-related topics. This organization also maintains a hotline and provides advice and referrals on a variety of consumer problems.

Consumer Action  
717 Market St., Suite 310  
San Francisco, CA 94103

(213) 624-8327 (English, Spanish, ;  
Email: [hotline@consumer-action.org](mailto:hotline@consumer-action.org)  
[www.consumer-action.org](http://www.consumer-action.org)

The three credit bureaus are also a source of information. See their addresses and websites above. See also their trade organization, the CDIA The Consumer Data Industry Association, [www.cdiaonline.org](http://www.cdiaonline.org).

## Surveys and Reports on Credit Reports and Credit Scores

- Consumers lack essential knowledge of credit reporting and credit scores, Consumer Federation of America, July 2003  
[www.consumerfed.org/072803creditscores.html](http://www.consumerfed.org/072803creditscores.html).
- Recommendations to Improve Consumer Awareness of Credit Reporting and Scoring, Consumer Federation of America, July 2003  
[www.consumerfed.org/credit\\_reporting\\_senate\\_testimony072903.pdf](http://www.consumerfed.org/credit_reporting_senate_testimony072903.pdf)
- An Overview of Consumer Data and Credit Reporting, Federal Reserve Board, February 2003

<http://www.federalreserve.gov//pubs/bulletin/2003/0203lead.pdf>

**Credit reporting laws:**

- California Consumer Credit Reporting Agencies Act: California Civil Code section 1785 et seq. See [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html)
- California Investigative Consumer Reporting Agencies Act: California Civil Code section 1786 et seq. See [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html)
- Federal law -- Fair Credit Reporting Act: 15 USC 1681 et seq. For the full text of the FCRA, see [www.ftc.gov/bcp/online/edcams/fcra/index.html](http://www.ftc.gov/bcp/online/edcams/fcra/index.html)

**Government agencies:**

- Federal Trade Commission, see above
- U. S. Comptroller of the Currency (800) 613-6743 [www.occ.treas.gov](http://www.occ.treas.gov)
- Federal Deposit Insurance Corporation (202) 393-8400 [www.fdic.gov](http://www.fdic.gov)
- Federal Reserve Board (202) 452-3693  
[www.federalreserve.gov/pubs/complaints](http://www.federalreserve.gov/pubs/complaints)
- California Department of Consumer Affairs, (800) 344-9940,  
[www.dca.ca.gov](http://www.dca.ca.gov)

**Consumer organizations:**

- U.S. Public Interest Research Group (USPIRG)  
[www.pirg.org/consumer/credit/index.htm](http://www.pirg.org/consumer/credit/index.htm)
- California Public Interest Research Group (CALPIRG)  
[www.calpirg.org](http://www.calpirg.org)
- Consumers' Union [www.consumersunion.org](http://www.consumersunion.org)
- Consumer Action (see above)
- Consumer Federation [www.consumerfed.org](http://www.consumerfed.org)

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## **Paying by Credit Card or Check: What Can Merchants Ask?**

Many states have laws that dictate what kind of information merchants can and cannot ask for or write down when a consumer pays with a check or credit card. Those states and their applicable laws are listed at [www.privacyrights.org/fs/fs15plus.htm](http://www.privacyrights.org/fs/fs15plus.htm).

The remaining information in this fact sheet applies specifically to California.

Two California laws limit the collection of personal information by merchants when you pay by credit card or check. These laws were enacted to prevent fraud and limit the amount of personal information which can be collected by merchants.

- When a consumer **pays with a credit card**, the merchant cannot record any personal information other than what is on the front of the credit card. (California Civil Code 1747.8)
- When a consumer **pays with a check**, the merchant cannot record the credit card number. (California Civil Code 1725)

### **Paying by Credit Card**

#### **What personal information can't a merchant collect when a consumer pays with a credit card?**

- Merchants cannot request or require that the consumer write any personal information, including address and telephone number, on any form associated with the credit card transaction when the consumer uses a credit card to pay for goods or services.
- In addition, the merchant cannot ask the consumer to provide personal information that the merchant then records.
- Merchants cannot use credit card forms with pre-printed spaces for personal information.

#### **Are there any exceptions?**

Yes. A merchant can, in certain limited circumstances, collect personal information including when:

- The credit card is used as a deposit.
- The credit card is used for a cash advance.
- The personal information is needed for something incidental but related to the use of the credit card. An example would be the address to which the purchased product is to be shipped.
- A merchant is required by federal law or regulation.

Merchants can require a consumer who pays for goods or services by credit card to show identification such as a California driver's license or California ID. If these are not available, another form of photo identification can be required to be shown. But merchants **cannot write or record** any information from these documents.

Merchants can record the card holder's driver's license number or

identification card number on any form associated with the transaction if the card holder pays with a credit card but does not provide the credit card. An example is if you are at a department store and forget your credit card but want to charge something to your account.

Some credit card companies such as MasterCard and VISA prohibit merchants from requiring additional identification when using their signed cards.

## **Paying by Check**

### **What personal information can't a merchant collect when a consumer pays by check?**

Merchants who accept a check\* **cannot**:

- Require a consumer to provide a credit card or record the **credit card number** in connection with any part of the transaction.
- Require a consumer to sign a statement agreeing to allow the consumer's credit card to be charged to cover the amount of the check in case the check bounces.
- Contact the credit card issuer to find out if the amount of credit available to the consumer will cover the amount of the check.

\* **Note:** The check must be for goods or services sold or leased at retail.

### **Are there any exceptions?**

Yes. A merchant **can** request or record a credit card number in connection with payment by check when:

- A check is used solely to obtain cash.
- A check is used as a deposit.
- A check is used to make a payment on that credit card account.

The following is also allowed when a merchant accepts a check for goods or services sold or leased at retail:

- The merchant can request the consumer to voluntarily show a credit card. The only information that the merchant can record is the type of credit card (such as Visa and Mastercard), the issuer and the expiration date. The credit card number cannot be recorded on the check.
- The merchant asking to see a credit card must inform the consumer that the credit card **is not required** to write a check. This can be done by either posting a notice that states "Check writing ID: credit

card may be requested but not required for purchases," or by training and requiring the employees to inform the consumer that the credit card does not have to be shown to write a check.

Further, the merchant **can**:

- Require the consumer to provide a California driver's license or a California ID number. Another form of photo identification can be required if these forms of identification are not available. It is not against the law for merchants to write ID numbers on checks.
- Require, verify and record a consumer's name, address and telephone number.
- Require a check guarantee card and record the number, whether or not the check guarantee card is also a credit card.

**What happens when a merchant breaks these laws?**

Merchants may be fined up to \$250 for the first violation and up to \$1,000 for each subsequent violation. In addition, the court can order the merchant to stop violating the law. If the merchant violates the law, the consumer can do the following:

- The consumer who has paid with the check or credit card may sue the merchant in small claims court. (In California, a lawsuit may be brought in small claims court for an amount up to \$5,000. You can only file two small claims court actions in the state within one year in which you ask for more than \$2,500.)
- If the consumer feels that the merchant has broken the law against many customers, the consumer may want to consult an attorney to bring a "class action suit."
- Another option is for the consumer to make a complaint to the Attorney General, the District Attorney or the City Attorney. If several complaints are received, they can choose to sue the merchant on behalf of California residents in Superior Court.

Here is a summary of California laws regarding payments to merchants by credit card and by check:

<b>Any person or business</b>	<b>is prohibited from.....</b>	<b>but may require.....</b>	<b>consequences of</b>
<b>accepting a credit card</b> for	writing or recording	showing a California	civil penalty of up to \$250

	security number.		
<b>accepting a check</b> in payment for goods or services sold or leased at retail	<ul style="list-style-type: none"> <li>• recording a credit card number;</li> <li>• requiring that a credit card be shown as a condition of accepting the check (the card can be requested, but not required).</li> </ul>	showing a California driver's license or ID card	civil penalty of up to \$1,000 for the first offense ; \$1,000 for second or subsequent offense  Section 1725, California Civil Code

## Signature Capture Devices

### What are signature capture devices?

Signature capture devices have recently been introduced by merchants. They are usually located at the cash register and are used when consumers pay by credit card. The signature capture device records the individual's signature and stores it in a computer system.

According to merchants, signature capture devices streamline their operations by saving them time and reducing the amount of paper generated. When there is a purchase dispute, it is easier for the merchant to locate the receipt by transaction number, using a computer, than locating the paper copy. Further, merchants point out that signature capture devices reduce fraud because there is less paper containing sensitive information available for others to obtain. And they say sales clerks are more likely to check the customer's signature.

However, many consumers feel uncomfortable using signature capture devices. They are concerned about the security of having their signatures stored electronically in a computer system. Would it be possible, for example, for someone to break into the company's computer system, obtain customers' digitized signatures, and then copy them for forgery purposes?

It is still too early in the life of signature capture devices to determine if they reduce or increase the risk of fraud for consumers -- or have no impact at all. We urge you to contact us if you experience fraud or any other type of privacy abuse due to signature capture devices.

### Are you required to sign a signature capture pad?

Most merchants do not require that you sign a signature capture device. However, sales clerks may be trained to encourage you to sign it. If you do not want to use a signature capture device, you may have to be persistent and talk with a manager.

## The Future of Consumer Data Gathering



Merchants are increasingly taking advantage of the power of computers to gather information about their customers. A growing practice among retailers is **database marketing**.

Information such as telephone number is gathered from customers at the time they make purchases. This allows the merchant to link actual purchases with the customer's name. Many retailers enhance their customer lists with additional data purchased from other companies. Such data might include estimated income, average ages of family members, hobbies and interests, home ownership or rental, and so on.

Retailers use this data to learn more about the types of customers who shop in their stores. They also use it to market directly to their customers through mailed advertisements, alerting them to sales and special offers. Retailers claim that database marketing helps them improve services to their customers and develop a base of loyal shoppers.

Indeed many consumers are concerned about what is done with the data that is compiled about them. Is it sold to other companies to generate unwanted mail and phone solicitations? (See PRC fact sheets 4 and 5 on ["junk" mail](#) and [telemarketing](#).) Is it possible that someday this data might be used for purposes unrelated to marketing, such as government surveillance, employment background checks, law enforcement investigations, or insurance company research? While this may sound farfetched to many, there are no laws which prevent these types of uses of marketing data.

Another growing practice is merchants' use of buyer's club cards. For example, many supermarket chains offer discounts to customers who sign up for such cards. When grocery items are "swiped" through the card reader, the merchant can record all such purchases and link them to the customer's name. Discounts are automatically provided for selected items. Some customers welcome the ability to receive discounts without having the burdensome task of clipping coupons from magazines and newspapers. But others are concerned about the loss of anonymous "coupons" and the fact that such data-collection could result in the development of comprehensive consumer profiles.

If you want to limit personal information that is collected by merchants, be assertive when asked for information that you do not feel is necessary for the transaction.

- Ask why the information is required and what will be done with it.
- Ask what benefit you receive for giving your personal information.
- Ask to see the company's privacy policy. If the company does not have a policy, encourage management to develop one.

- Do not provide non-essential information unless you are satisfied with the intended use.

Contact your state and federal legislators if you feel further legal protection is needed to address the growing practice of consumer data gathering.

### **For more information**

- [CALPIRG](#) also has information on merchant laws. Call (800) 533-4449
  - 3435 Wilshire Blvd, # 307  
Los Angeles, CA 90010  
213-251-3680
  - 926 J St. #523  
Sacramento, CA 95814  
(916) 448-4516
- Citations for the California laws restricting the type of personal information that may be recorded by a merchant when a consumer pays by credit card or check are as follows:  
[www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html)

California Civil Code 1747.8 (Credit cards)  
California Civil Code 1725 (Checks)

- The [California Department of Consumer Affairs](#) offers a free handbook on how to file a small claims court action. To order, write or call the

California Department of Consumer Affairs  
400 R Street, Suite 3090  
Sacramento, CA 95814

Phone: (916) 445-5126.

The Privacy Rights Clearinghouse offers a "[Wallet Card](#)" for consumers stating merchants' information-gathering limits under California law when a consumer pays by check or credit card.

The Clearinghouse also offers a 5x8 inch "Merchant Placard" to post next to cash registers to remind clerks and customers of the provisions of these laws. Order as many as you need. Contact the Privacy Rights Clearinghouse to order your placards.

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## **Frequently Asked Questions about Financial Privacy**

The Financial Services Modernization Act (also known as the Gramm-Leach-Bliley Act, or GLB) requires financial institutions to notify their customers about the personal information they collect and share with others. This new federal law also requires that banks and other financial companies give consumers a way to opt-out, that is say "no," if the company's practice is to disclose information to outside companies (third-party nonaffiliates).

Companies were required to notify consumers by July 1, 2001. The Privacy Rights Clearinghouse (PRC) has received many inquiries from consumers who are confused about the most basic rights given by GLB. Following are some of consumers' most frequently asked questions and our responses.

### **I missed the July 1 deadline. Can I still opt-out?**

Yes. Your right to opt-out is continuing. The July 1, 2001, deadline was for companies to send their privacy notices to all "customers." You are a "customer" of a bank or other financial company if you have an ongoing relationship. You should have received a notice from every company where you have an open account.

### **I don't remember receiving any notice from my bank, but I may have thrown this out with "junk mail." Can I still opt out if I don't have the notice?**

Yes. However, you are required to follow the procedure for opting out that the notice gives you. Many companies have established special addresses and/or toll-free telephone numbers just for opting-out. If you don't have the privacy notice but want to opt-out, it is best to ask your financial institution for a copy of the privacy policy. Your desire to opt-out may not be properly recorded unless you follow the procedure given in the notice.

The PRC has compiled a list of addresses and toll-free numbers consumers can use to opt-out. [www.privacyrights.org/fs/fs24a-OptOutAddresses.htm](http://www.privacyrights.org/fs/fs24a-OptOutAddresses.htm). This list of addresses and toll free numbers was compiled from our review of actual privacy notices sent by the companies listed. If writing a letter is one of the options given in the

privacy notice, you may use our sample letter.  
[www.privacyrights.org/fs/fs24a-letter.htm](http://www.privacyrights.org/fs/fs24a-letter.htm).

However, it is always wise to check the company's current privacy notice before attempting to opt-out, since a financial institution is free to change its policy from time-to-time. Companies are required to notify you of any change to their privacy policy. But, as we have learned from the initial notices, these pieces of paper are easy to overlook.

**My bank's privacy notice says I can send a letter to opt-out. What should I say in the letter?**

The PRC web site includes sample letters that you can use to opt-out. The letters appear as an attachment to Fact Sheet 24(a). See: [www.privacyrights.org/fs/fs24a-letter.htm](http://www.privacyrights.org/fs/fs24a-letter.htm).

The sample letters include the language necessary to opt-out both under the GLB and the Fair Credit Reporting Act (see below). The sample letters include other opt-out choices as well. Understand that some of the optional paragraphs we have included in the sample letter need not be honored by your financial institution. A company has no obligation under GLB to stop sharing your information with affiliates or with joint marketers. By requesting privacy protections that go beyond what a company is required to do, you are simply casting a vote -- that is, to tell your financial institution that you want to limit how it uses your personal information.

**I received a notice from my bank that says I can opt-out of sharing my "creditworthiness" information with the bank's affiliates. What does this mean?**

The federal Fair Credit Reporting Act (FCRA) allows you to opt-out of this type of information sharing among corporate affiliates. "Creditworthiness" information may include information you provide on credit applications, your income, your debt level, and how you pay your bills.

The FCRA opt-out does not, however, give you the right to prevent your "experience and transaction" information from being shared with affiliates. This includes information about the checks you write, the credit card charges you make, your deposits, withdrawals, wire transfers and so on.

**I heard that I will receive a notice every year. Does that mean I have to opt-out over and over to protect my information?**

Companies are required to send an annual notice. However, you are not required to opt-out every year. Once you make an opt-out choice (or make no choice) your decision will be in effect for that account until you change it.

**I received a notice from a credit card company I had an account with years ago. Do I still need to opt-out even if the account is closed?**

Companies where you have a closed account do not have to send you a notice. But companies where you have an ongoing relationship must tell you how they treat your personal information when you close your account.

If you receive a notice regarding a closed account, that could mean the company is not current on separating the closed and open accounts of its customers. If a company sends you a privacy notice and gives you an opportunity to opt-out, whether or not the account is open or closed, we recommend you take advantage of the opportunity to opt-out.

**I received an e-mail message that said after July 1, 2001, my credit information can be shared with anyone. The message said I can stop this by calling 888-567-8688. Is this true?**

The person who initiated the e-mail about calling 888-567-8688 has confused two different opt-out laws – the Fair Credit Reporting Act (FCRA) and GLB. This toll-free number enables you to opt-out of receiving pre-approved credit offers that originate from information supplied by the credit reporting agencies. The number is not a scam. It is mandated by the FCRA and has been in existence since 1997. The e-mail message confuses this existing opt-out opportunity with the July 1<sup>st</sup> implementation date of the GLB. See the PRC's press release on this confusing and erroneous e-mail message at [www.privacyrights.org/ar/optout\\_truth.htm](http://www.privacyrights.org/ar/optout_truth.htm).

**My spouse (or partner) and I have a joint account. Do we both have to opt-out to protect our personal information?**

If both parties to an account object to having personal information shared, both parties should opt-out. Federal regulations require that companies give you notice of whether both or only one party to a

joint account needs to opt-out. However, we have found that some notices do not include information about joint accounts.

**I received a notice from my bank that says information is disclosed to third-party nonaffiliates "as permitted by law." But the notice does not provide an address or phone number to opt-out. What does this mean? Is my bank violating the law by not providing me an opt-out?**

The most likely explanation is that the bank only shares your personal information with third-party nonaffiliates that provide services (e.g. check printing) for the bank. The bank may also share your information with third-party nonaffiliates that have entered into a joint marketing agreement with them. Both service contracts and joint marketing agreements are exempt from the opt-out requirement in GLB. So, if you have not been given an opt-out address or telephone number to contact, it is very likely that your bank has decided *not* to sell customer data to third parties, even though it *does* share your customer data with those entities that are "permitted by law."

**If I go to the trouble to opt-out, how can I be assured my company won't sell or disclose my information anyway?**

The answer to this question is complicated. Many types of companies are included in the definition of "financial institution." Banks, insurance companies, credit unions, securities brokers and commodities brokers operate in what is called a "regulated industry." This means that the company's activities are regulated by a particular government agency called "functional regulators" in the law.

If a company operates within a "regulated industry," the agency that oversees the activities of that financial institution conducts regular audits to assure compliance with the regulations. Regular audits should detect companies that are not in compliance with regulations.

Other types of companies included in the term "financial institution" are not in regulated industries. Such companies come under the jurisdiction of the Federal Trade Commission (FTC), an agency that does not regulate any particular financial industry. Thus, the FTC does not conduct routine audits of any company. The FTC does, however, have the power to go to court to enforce its privacy regulations.

An insurance company that is not also engaged in an industry regulated by the federal government would fall within the jurisdiction of state insurance regulators. Each state insurance commissioner is responsible for assuring compliance within the insurance industry.

**I did not respond to the opt-out notice I received, so my information is already "out there." Why should I take the time to opt-out now?**

It is true that if you did not respond to the opt-out notices within the time given (usually 30 days), your bank or other company is free to share your information in the way described in its privacy notice.

However, you should remember that information is constantly being collected in an active account. Although you cannot bring back information that has already been disclosed, by opting out now or at a later date, you can stop future disclosures.

**I strongly object to a company sharing *any* information about me without my consent. Is there any way to change this law?**

You can voice your opinion to your representatives in Congress as well as your state legislators. GLB allows states to enact stronger privacy protections. To date, most efforts by states to enact strong privacy protections have been defeated. This is largely due to the strong and well-financed lobby of the financial services industry.

Failure of states to enact stronger privacy legislation is also due to the fact that consumers have not been adequately informed about information-sharing practices. The more consumers become informed, the better they are able to communicate their point of view to state lawmakers.

The same is true for consumers' opinions expressed to federal lawmakers who have it within their power to strengthen GLB. Tell your U.S. Senators and Representative that you want laws to give consumers more control over how their personal information is used.

If you want to contact your legislative representatives, the web site [www.privacyrightsnow.com](http://www.privacyrightsnow.com) offers a simple letter you can use to express your opinion.

**To learn more about financial privacy, visit our web site and read the following:**

- Fact Sheet No. 24. "Financial Privacy in the New Millennium: The Burden Is on You," [www.privacyrights.org/fs/fs24-finpriv.htm](http://www.privacyrights.org/fs/fs24-finpriv.htm)
- Fact Sheet No. 24(a). "Financial Privacy: How to Read Your "Opt-Out" Notices," [www.privacyrights.org/fs/fs24a-optout.htm](http://www.privacyrights.org/fs/fs24a-optout.htm)
- Fact Sheet No. 24(b). "Take the Cloze Test: Readability of a Financial Privacy Policy," <http://www.privacyrights.org/fs/fs24b-ClozeFinancial.htm>
- Fact Sheet No. 24(c). "How to Shop for Financial Privacy," [www.privacyrights.org/fs/fs24c-ShopFin.htm](http://www.privacyrights.org/fs/fs24c-ShopFin.htm)
- "Lost in the Fine Print: Readability of Financial Privacy Notices," by Mark Hochhauser, readability consulting, [www.privacyrights.org/ar/GLB-Reading.htm](http://www.privacyrights.org/ar/GLB-Reading.htm)
- "Confusing E-mail about Opt-out Number Send the Wrong Message (7/25/01)," [www.privacyrights.org/ar/optout\\_truth.htm](http://www.privacyrights.org/ar/optout_truth.htm)
- See also Fact Sheet No. 6. "How Private Is My Credit Report?" [www.privacyrights.org/fs/fs6-crtd.htm](http://www.privacyrights.org/fs/fs6-crtd.htm)

## **Debt Collection Practices: When Hardball Tactics Go Too Far**

Dealing with a debt collector can be one of life's most stressful experiences. Harassing calls, threats, and use of obscene language can drive you to the edge. What's worse, a collector may embarrass you by contacting your employer, family or neighbors. You may even be hounded to pay a debt that is not rightfully yours. Sure, collection agencies have a job to do. Even so, there are limits on how far a debt collector can go.

This guide explains the federal Fair Debt Collection Practices Act (FDCPA) and other laws that apply to debt collectors. We provide information about how to stop calls from collectors and how to correspond with them about your account or to dispute a collection action. We also explain your right to privacy, and how debt collection efforts may affect your job, your credit report, even information in your medical files.

1. [Tips for Dealing with a Debt Collector](#)
2. [Fair Play and the Fair Debt Collection Practices Act](#)
3. [Debt Collectors and Your Privacy](#)



4. [Debts and Collectors not Covered by the FDCPA](#)
5. [State Laws and Debt Collection Agencies](#)
6. [How to Write to a Debt Collector: Tips on Filing a Dispute](#)
7. [How to Complain about a Debt Collector: Tips on Suing](#)
8. [Debt Collectors and Identity Theft](#)
9. [Debt Collectors and Your Job](#)
10. [Debt Collectors and Medical Bills](#)
11. [References](#)  
[Attachment A: State Laws and State Publications](#)  
[Attachment B: Sample Letters](#)

## 1. Tips for Dealing with a Debt Collector

**1. Know how the collection process works.** Why are you being contacted by a collection agency? It usually means that a creditor has not received payment from you for several months. They have negotiated with another company or are using an in-house affiliate called a debt collector to attempt to get you to pay. Third party collectors often purchase your debt for less than you owe, and your debt is now owned by the collector. A collector may also work for the creditor in return for a fee or a percentage of any money collected. In-house collectors that are affiliated with the original creditor work on behalf of the company directly. Because the creditor has taken a loss on your account or because you are late with making payments, this negative information may show up on your credit report.

Another reason a debt collector may be contacting you is that an imposter has used your identity to obtain credit, a crime known as identity theft. You are not responsible for the debt, but you may experience difficulties convincing the debt collector of this. Under federal law, the debt collector has certain responsibilities in investigating your situation and may be liable for failure to cooperate. We discuss identity theft in [Part 8](#).

**2. Know your rights.** Learn to recognize abusive collection practices. Even if you owe a debt, a collector *owes you* fair treatment and respect for your privacy. Also, be aware that even if the collector's conduct does not exactly match the language of the federal Fair Debt Collection Practices Act, that collector may still be liable for its conduct. We explain your rights under federal and state laws in [Parts 2](#), [3](#) and [5](#).

**3. Ask questions and learn specifics.** Often the first contact with the debt collector is a telephone call from a representative, a pre-recorded message asking you to call a mysterious toll-free number, or a letter. When a collector calls or you call back, get as much information as possible. Ask for the name of the caller, the collection agency, the creditor, and the address and fax number for sending correspondence. Also ask about the amount the collector claims you owe. In this first call, you should also tell the caller you expect written follow-up if you have not yet received a notice in the mail. For information about how to correspond with a collector or complain to a government agency, see Parts [6](#) and [7](#).

**4. Assert your right to privacy.** You can tell the caller that you want all future contact in writing rather than by phone. You can also instruct the collector not to call you at work or at all if that is your choice. It is important to follow up on such requests in writing. If you notify the collector not to contact you at all, it is entitled to contact you one more time to explain how it intends to proceed.

Also you should tell and write the collector that you are the only person to be contacted. Since the agency is well aware of your location, there is no need to contact your employer, neighbors, relatives, or friends to find out where you are.

If you are an employer, friend, neighbor, or family member who is being contacted by a collector, you can write the collector and tell it to stop contacting you. See Parts [3](#) and [6](#) for more privacy protection tips.

**5. Start and keep a file.** At the first contact from a collection agency, start a file. Your file should include:

- Dates and times of phone conversations, pre-recorded messages the collector leaves on your voice mail, and when you send or receive correspondence.
- Notes of conversations along with the name of the collection agency employee.
- Copies of correspondence you send, as well as those you receive including envelopes. Collectors are supposed to give you written notice of the collection action five days after you are contacted by phone.
- Copies of messages that are abusive or overly intrusive.

There is no set time after which you will never be contacted again about a debt. Some debts are sold to other collectors even after being properly disputed. Keep all records regarding disputed debts

indefinitely in case the debt comes back to haunt you, and you need to dispute it again.

**6. Put it in writing.** Send any correspondence, including disputes, to both the collection agency and the creditor by Certified Mail, Return Receipt Requested. When in doubt, send a written confirmation of anything that you may need to prove later (for example, a promise or threat made, a rude or harassing comment received, or an explanation given you that may show improprieties in the handling of your dispute or your payments). See Parts [6](#) and [7](#) for tips on corresponding with collectors, government agencies, or collector associations about abusive practices. Also, see the Sample Letters in [Attachment B](#).

**7. Clarify payments.** If you negotiate a repayment plan over the phone, ask the representative to send you the terms of the plan in writing. You may also write a letter that explains your understanding of the negotiated repayment plan. Payments made to a debt collector when multiple debts are involved should clearly specify to which debt the payment is to be applied. It is possible to dispute one debt, but agree to pay another. Also, any promise to remove or adjust reports in your credit history should be documented for later enforcement.

**8. Pay the proper party.** Payments should be made to the debt collector and not the original creditor unless you are expressly instructed to pay the creditor directly. In this case, you should confirm such instruction in writing to both the creditor and the debt collector.

**9. Don't be coerced.** Never pay a bill you don't owe just to get the collector to "go away." Any payment of the debt is considered an acknowledgement that you are responsible. Even if you pay, that will not erase a negative entry on your credit report. See Parts [6](#) and [7](#) for information on how to notify collectors in writing about a variety of situations in which they might be attempting to coerce payment.

**10. Examine balances, interest charges, and other fees and charges.** Carefully review the amount you are being asked to pay. You should ask the collector to tell you the amount of the original debt as well as give you a breakdown of any interest, fees, or charges that have been added. Federal law prevents a debt collector from charging you any more than the amount you actually owe, if not permitted by the laws of your state or the terms of the original agreement with the creditor. (15 USC § 1692(f))

**11. Complain about abusive collection practices.** Under the federal FDCPA, a collector is not allowed to make idle threats, express or implied (for example, "We must get your payment no later than the day after tomorrow"), or use abusive or profane language. A collector should not discuss your account with third parties or use the phone to harass you. Your state may also have a law that sets standards for debt collectors (see [Part 5](#)). For tips on how to complain to authorities about abusive practices, go to [Part 7](#).

**12. Military members** should make an appointment with the local Judge Advocate General's office if contacted by a collector. The Soldiers and Sailors Civil Relief Act (SSCRA) provides protections for military members whose financial life is affected by military service. Visit the Department of Army's web site for information on how the SSCRA applies to military members, [www-tradoc.army.mil/opja/la/sscra.htm](http://www-tradoc.army.mil/opja/la/sscra.htm).

**13. Don't be fooled.** Be wary of advertisements that promise an easy solution to debt. Debt repair "doctors" and credit consolidators may end up causing you more harm than good. Also, federal and some state statutes have "credit repair organization" acts that may limit the amount that you can be charged and when you can be required to pay such charges, even if the person you consulted is an attorney. These laws were enacted because of the number of people who preyed on the public's ignorance by charging them to do what the person was fully empowered to do themselves. Violation of these acts may even constitute criminal activity, and be the basis for the suspension or revocation of the individual's license. The FTC and the IRS have been investigating scam debt consolidation offers, [www.ftc.gov/opa/2003/10/ftcirs.htm](http://www.ftc.gov/opa/2003/10/ftcirs.htm). Read the FTC's publication, "Ads Promising Debt Relief May Be Offering Bankruptcy," [www.ftc.gov/bcp/online/pubs/alerts/bankrupt.htm](http://www.ftc.gov/bcp/online/pubs/alerts/bankrupt.htm).

**15. Seek help, but be careful.** Seek assistance in resolving your debt(s) through a member agency of the National Foundation for Consumer Credit, such as the Consumer Credit Counseling Service. This national organization can help you locate an affiliated counselor in your area (see References, [Part 11](#)). Do not agree to any payment plan until you have confirmed the credentials of the counseling service. Some charge excessive fees. Before you decide to work with a counselor, check with the Better Business Bureau, [www.bbb.org](http://www.bbb.org).

**16. Seek legal help.** Some situations may call for the assistance of a consumer lawyer. You may sue in state or federal court within

one year of violation of the law. Look for an attorney with expertise in the FDCPA and other relevant federal and state laws, and with a proven track record.

## 2. Fair Play under the FDCPA

The federal Fair Debt Collection Practices Act (FDCPA) sets the national standard for collection agencies. The FDCPA, enforced by the Federal Trade Commission (FTC), prohibits abusive collection tactics that harass you or invade your privacy. (15 USC §§1692-1695) The full text of the FDCPA is found at [www.ftc.gov/os/statutes/fdcpa/fdcpact.htm](http://www.ftc.gov/os/statutes/fdcpa/fdcpact.htm).

Generally, the FDCPA only applies to agencies that collect debts for others. However, other federal or state laws may apply to in-house debt collections. For more on debt collections not covered by the federal law, as well as collection laws in California and other states, see Parts [4](#) and [5](#) and [Attachment A](#) of this guide.

### Can a debt collector contact me by phone?

Yes, but within limits. A debt collector **cannot**:

- Call you before 8 a.m. and after 9 p.m. unless you agree.
- Call you repeatedly or use the phone to harass you.
- Trick you into accepting collect calls or paying for telegrams.
- Use obscene language, make negative comments about your character, or make religious or ethnic slurs.
- Call you at work if the collector knows your boss does not allow such calls.

If you have an attorney, the collector should call that person, not you.

Fair play under the FDCPA also means a debt collector owes you the truth about who it is and what it intends to do. False statements and deceptive practices like the following are **not allowed**. A collector **cannot**:

- Claim to be an attorney or government employee when it is not.
- Send you documents that look like legal papers when they are not.
- State that forms sent to you are *not* legal documents when they are.
- Say that you committed a crime.

### A debt collector threatened to sue me. Can it do that?

A collection agency can file a lawsuit to collect a debt. However, among the many things a collector is not allowed to do is threaten you with a lawsuit just to get you to pay the debt. Examples of threats and deceptive practices **prohibited** by the FDCPA are when the collector:

- Says it will garnish your wages or sell your property if it is not legal to do that.
- Says it will sue you, if the collector doesn't intend to sue.
- Is not truthful about the amount of money you owe.
- Says you will be arrested if you don't pay the debt.
- Threatens you with violence.

### **Does a creditor have to tell me before it sends my account to a collection agency? What about credit bureaus?**

You have no right to be notified under the FDCPA that an account will be referred to a collection agency. However, your state may have a law that requires notice in some cases. In California, for example, you must be notified before a health or fitness club refers a debt to a collection agency. If you are threatened with such a referral with no sign of your creditor carrying through on the threat, the creditor may have violated the law.

When the Fair and Accurate Credit Transactions Act (FACTA) is implemented in late 2004, you should receive written notice before a creditor posts negative information to your credit report. For summaries of the new FACT Act, visit these consumer web sites:

- National Consumer Law Center,  
[www.consumerlaw.org/initiatives/facta/nclc\\_analysis.shtml](http://www.consumerlaw.org/initiatives/facta/nclc_analysis.shtml)
- Consumers Union,  
[www.consumersunion.org/pub/core\\_financial\\_services/000745.html](http://www.consumersunion.org/pub/core_financial_services/000745.html)

### **Does an agency have to contact me in writing before it calls me?**

No. A collection agency may contact you first by telephone. Within five days after the phone call, the collector must send you a written notice. The notice must tell you how much you owe and the name of the creditor that says you owe the money. The written notice must also tell you how to file a dispute if you don't agree that you owe the money. For more on disputing a debt that is not yours, see [Part 6](#).

## **Does a debt collector have to tell me anything else?**

The person who calls you from a collection agency has to give you his or her name and the name of the agency. The caller cannot pretend to be someone else. A collection agency cannot lie about who it is or send documents that mislead you.

## **I'm receiving phone calls from a collector. Can I stop the collection agency from contacting me by phone?**

You can write a letter to the agency telling it not to contact you by phone, not to call at certain times or locations, or not to make any further contact at all. This last request does entitle the collector to contact you one more time to inform you of what, if any, action it intends to take to collect the debt, but not to threaten you. (See [Part 6](#)). You should send such a letter by certified mail and request a return receipt. If the company has a fax number, send the letter by both fax and by mail. Understand, telling the collection agency not to contact you should stop the phone calls, but it won't stop the collection efforts.

For more on collection tactics that are prohibited by the FDCPA, see the FTC publications:

- "Fair Debt Collection,"  
[www.ftc.gov/bcp/online/pubs/credit/fdc.htm](http://www.ftc.gov/bcp/online/pubs/credit/fdc.htm)
- FTC Staff Commentary,  
[www.ftc.gov/os/statutes/fdcpa/commentary.htm#805](http://www.ftc.gov/os/statutes/fdcpa/commentary.htm#805).

## **3. Debt Collectors and Your Privacy**

Public embarrassment and the prospect that your personal information might be shared with others are real concerns when dealing with a collection agency. The FDCPA includes provisions intended to safeguard privacy.

The FDCPA says discussions about the debt can only be held with (1) the individual, (2) the creditor, (3) an attorney representing one of the parties, and (4) a credit bureau. Public airing of your business intended to shame you into paying a debt is not allowed. Debt collectors:

- Cannot exchange (with other agencies) information about individuals who allegedly owe a debt.
- Cannot distribute a list of alleged debtors to its creditor subscribers.
- Cannot advertise a debt for sale.

- Cannot compile a list of debtors for sale to others.
- Cannot leave messages with third parties, asking them to have the debtor call the collector.

### **May a collector send me mail in care of another person?**

Only if you live at the same address or receive your mail at that address. Even when communicating with you directly by mail, a collector is not permitted to use a postcard. The outside of an envelope sent to you by a debt collector should not include language to indicate that the mail is from a debt collector or that the letter relates to the collection of a debt. In short, the collector should take reasonable measure to assure your privacy. For example, if the collector knows that you share your address with others, it may be required to mark the letter "personal" or "private" and not give any outward appearance of the nature of the letter.

### **May a debt collector contact my neighbors or family members about my debt?**

Not if the collector knows your name and telephone number and could have contacted you directly. When contacting your family members including minors or neighbors to find out how to locate you, the collector:

- Cannot tell others you owe a debt or discuss details of the account.
- Must identify himself, (by name, but not as a debt collector).
- Must identify the name of the collection agency only if asked.
- Can only contact the party once unless the collection agency has reason to believe the person has new information.
- Cannot leave information about a debt on a third party's answering machine or voice mail service.

Contacts with a spouse, the parent of a minor, a guardian, co-signer, executor, or administrator are considered the same as contacts with the debtor under the FDCPA.

### **I am being contacted by a collector looking for my former roommate, neighbor, or relative. Can I stop this?**

The FDCPA says a debt collector may contact someone other than the debtor, but only to learn the location of the debtor. Usually this contact can be made only once, unless the collector has reason to



believe the person has new information. If you are a relative or roommate, a debt collector who contacts you repeatedly also violates *your* privacy. Excessive contact may be considered a form of harassment.

You should be able to stop contact by writing to the debt collector. For an example of what to say if you are the alleged debtor and want to cease calls to you or if the debt is someone else's and a collector is contacting you about it, see sample letters 4 or 6 at [Attachment B, www.privacyrights.org/Letters/letters.htm#Debt](http://www.privacyrights.org/Letters/letters.htm#Debt).

If the collector persists in contacting you, discloses details about the other person's debt, or if the collector's actions have been abusive or threatening, you should complain to the appropriate government agency and seek legal advice. The important thing to remember is that you have the same rights as the debtor, including the right to bring an action for any of the violations described here. For further discussion, see [Part 7](#).

#### **If I co-sign a loan, can a debt collector contact me?**

Yes, if the person who asked you to co-sign does not pay. When you co-sign a loan, you are guaranteeing that the lender will be repaid – either by the person who asked you to co-sign or by you.

As the co-signer, you have the same legal protections as the primary signer. You may also have additional claims against the creditor and possibly the collector if you were not given the special disclosures required under state and federal law advising co-signers of the risks involved. For more on the implications of co-signing for another person's debt, see the FTC publication "Cosigning a Loan," [www.ftc.gov/bcp/online/pubs/credit/cosign.htm](http://www.ftc.gov/bcp/online/pubs/credit/cosign.htm).

### **4. Debts and Collections Not Covered by the FDCPA**

#### **Does the FDCPA cover all collection actions?**

No. Here are examples of debt collection activities that ***are not*** subject to the FDCPA:

- **A creditor that collects its own overdue accounts** is *not* subject to the FDCPA. The law defines "debt collector" as one in the business, the principal purpose of which is the collection of debts due *another*. But in-house collections *are* covered by the FDCPA if they create the impression that they are either an independent collector or a governmental agency. State collection laws such as California's may apply to both

outside and in-house collection activities. Where they do, the collector so defined is subject to federal law. For more on state debt collection laws see [Part 5](#) and [Attachment A](#).

- **A property manager** is probably not covered because this person usually works for the property owner. But, an attorney who collects unpaid rent for a property owner is covered if the attorney regularly collects for others. (FTC Opinion Letter to Goodacre, 11-6-95 [www.ftc.gov/os/statutes/fdcpa/letters/goodacre.htm](http://www.ftc.gov/os/statutes/fdcpa/letters/goodacre.htm))
- **Government employees** whose job is to collect debts as an official duty are not covered by the FDCPA. Student loans and debts collected by the Internal Revenue Service (IRS) are a good example of debts collected by government employees.

However, when the government refers collection of debts to an outside agency, the FDCPA applies. The U.S. Department of Education sometimes refers collection of student loans to an outside collector. For more on student loans and collections, see the Department of Education's web site, [www.ed.gov/offices/OSFAP/DCS/collection.agencies.html](http://www.ed.gov/offices/OSFAP/DCS/collection.agencies.html).

Even if the government uses its own employees to collect a debt, the agency may adopt internal procedures that follow the FDCPA. The IRS, for example, follows the principles of the FDCPA for in-house collections. See the IRS Publication, "Application of Certain Fair Debt Collection Procedures" [www.irs.gov/individuals/article/0,,id=97289,00.html](http://www.irs.gov/individuals/article/0,,id=97289,00.html).

The type of debt, such as a student loan, may affect whether all of the rights you would otherwise enjoy may be afforded you in this particular situation.

- **Process server**, that is someone attempting to serve a copy of a court order enforcing payment of a debt, *is not* covered by the FDCPA, provided its efforts are limited to the service of process.
- **Consumer credit counseling services** are *not* subject to the FDCPA if the service is:
  - A nonprofit organization, and
  - Receives payments from the debtor for distribution to creditors.

Despite the many collection activities that fall outside the FDCPA, the FTC recently reported to Congress that abusive debt collection

practices not subject to that law may still be subject to an FTC enforcement action under the Federal Trade Commission Act. Similarly, such activities may be subject to the provisions of other acts prohibiting unfair business practices.

[www.ftc.gov/os/statutes/fdcpa/fdcpa2003rpt.htm](http://www.ftc.gov/os/statutes/fdcpa/fdcpa2003rpt.htm)

### **Are attorneys subject to the FDCPA?**

An attorney that regularly collects or attempts to collect consumer debts owed another, directly or indirectly, must comply with the FDCPA. The law also applies to attorneys who act as in-house counsel and who send dunning letters or make telephone calls on behalf of their employer/client. For more information about debt collection efforts that are and are not covered by the FDCPA, see the Federal Trade Commission's Commentary on the FDCPA.

[www.ftc.gov/os/statutes/fdcpa/commentary.htm](http://www.ftc.gov/os/statutes/fdcpa/commentary.htm)

The status of attorneys as debt collectors may vary under state collection laws. To find out what the laws are in your state when an attorney acts as debt collector, contact your state Attorney General through the web site of the National Association of Attorneys General (NAAG), [www.naag.org](http://www.naag.org) and see [Part 5](#) below.

### **What is the Debt Collection Improvements Act?**

The Debt Collection Improvements Act (31 USC § 3711) applies to debts owed to the federal government. Collection efforts are under the control of the Financial Management Service, a part of the U.S. Department of Treasury. For more on this law and how it applies, see the Department of Treasury web site at

[www.fms.treas.gov/news/factsheets/index.html](http://www.fms.treas.gov/news/factsheets/index.html).

## **5. State Laws and Debt Collection Agencies**

Over half of the states have laws that govern the activities of debt collectors. Some laws provide additional protections not found in the federal law. Attachment A to this guide lists such state laws and provides links to publications about them,

[www.privacyrights.org/fs/fs27plus.htm](http://www.privacyrights.org/fs/fs27plus.htm).

California's Fair Debt Collection Practices Act (California Civil Code § 1788, et seq.) adds to the federal law in several ways. Unlike the federal law, the California law applies to third-party collectors *as well as creditors that collect debts for themselves*.

California law also gives you added protections against unwarranted contact with your employer. In California a debt collector **may only** contact your employer to:

- Verify your employment status.
- Verify your business address.
- Garnish your wages when a court issues a judgment against you.
- Find out about insurance coverage if the debt involves a medical bill.

Under California law, the debt collector must first attempt to contact your employer in writing for any one of the allowed purposes (except for verification of employment, in which case a single oral contact is permitted). The collector may only telephone or make a personal contact with your employer regarding the issues listed above if after 15 days there has been no response to the written inquiry.

For more on debt collection in California, see the California Attorney General's publication, "Collection Agencies," [www.caag.state.ca.us/consumers/general/collect.htm](http://www.caag.state.ca.us/consumers/general/collect.htm).

### **Does a collection agency need a license?**

There is no federal license or registration required for collection agencies. However, in some states debt collectors must register or apply for a state license. Licensing requirements vary from state to state. Many states also require collection agencies to be bonded.

In some states, such as California, there may have been prior requirements for licensing of collectors, resulting in state regulations being retained on the books of the state even after the regulatory agency has been disbanded. These regulations may provide additional details and support for legal arguments of what is considered proper.

To learn more about the licensing and bonding requirements for collection agencies operating in your state, link to your state's collection law through Attachment A, [www.privacyrights.org/fs/fs27plus.htm](http://www.privacyrights.org/fs/fs27plus.htm). If your state is not listed,

contact your state's attorney general through the National Association of Attorneys General web site, [www.naag.org](http://www.naag.org).

You may also contact your state's consumer protection office through the federal government's Consumer Action web site, [www.consumeraction.gov/state.shtml](http://www.consumeraction.gov/state.shtml).

## **6. Corresponding with a Debt Collector: Tips on Filing Disputes**

In [Part I](#), we suggest you start a file at your first contact with a collector. Letters you write as well as ones sent to you are an important part of your file. Letters, along with your notes of telephone conversations and personal contact, create a "record." Your file will be invaluable if you ever find it necessary to complain to a government agency or file a lawsuit. (See [Part 7](#))

There are many reasons to write to a collector. There are also certain things to look for when a debt collector writes to you. Here are just some things that might lead you to write a letter to a collector:

- It is not your debt. The collector has you confused with someone else.
- You are a victim of identity theft – someone used your identity to run up charges.
- You already paid the debt.
- The creditor sent the bill to an old address, even though you told the creditor you moved.
- The collection agency says you owe more than you think or says you owe an exorbitant amount in fees and extra charges.
- You need to clarify your conversation with a collection agent.
- You would like to stop phone calls to you or others.

You may also want to create a written record of your dealings with the collector. A record could prove particularly useful later on, especially if you are dealing with a problem collector or one that refuses to put its agreements with you in writing.

Some things you would record in a letter to a debt collector:

- Promises.
- Terms of payment.
- Commitments to adjust entries in credit history.

- Proper crediting of payments.
- Instances where the collector failed to keep a promise to you or failed to act within the agreed upon time.
- Instances where the collector or its representative engaged in abusive practices such as threats, abusive language, or contact with third parties.

### **How do I dispute a collection action?**

Your first contact with a collection agency is likely to be a telephone call. The law requires a collection agency to send you a written notice five days after it first contacts you. The FDCPA requires a collection agency to tell you how to contact the collector in writing.

The written notice must also tell you how to dispute the debt and give you the information you need to lodge a dispute. The FDCPA (§1692g(a)) says the written notice should also tell you:

- The amount of the debt.
- The name of the creditor.
- A statement that if you notify the debt collector in writing within the 30-day period that you are disputing the debt, the collector will obtain verification of the debt or a copy of a judgment against you.
- A statement that, if you request it, the collector will provide you with the name and address of the original creditor, if different from the current creditor.
- A warning informing you that, "This is an attempt to collect a debt and any information obtained will be used for that purpose."

If you do not receive the notice within five days, call the collection agency and ask for its address and fax number. Then, send a letter to the collector noting its failure to send you the required notice. As a minimum, make a note for your file.

### **What information should I include in a letter?**

We have developed several debt collection letters that you can tailor to fit your specific situation in [Attachment B](#), [www.privacyrights.org/Letters/letters.htm#Debt](http://www.privacyrights.org/Letters/letters.htm#Debt). We include suggested wording for disputing a debt as well as giving the collector notice to stop contact with you, people you know, or your employer. The sample letters are not intended to confer legal advice and are only offered to provide guidelines.

In [Part 7](#) we offer guidance on how to write a complaint letter to a government agency. The same suggestions apply when writing to a collection agency. It is particularly important to get organized, get to the point, and maintain a business-like tone.

It is a good idea to include a date in your letter by which you expect to hear back from a collector, for instance, that either it is investigating your dispute or will no longer contact you about another person's debt. Usually, a date of two to three weeks is sufficient.

It is also very important to send correspondence to a debt collector by Certified Mail, Return Receipt Requested. This way, you will receive a signed and dated notice that the collector has received your letter. Without confirmation, it may come down to your word against the collector. You may also want to fax your letter before mailing it.

### **What happens after I dispute a collection?**

After you file a dispute, the collection agency then must stop collection efforts until it has conducted an investigation. This means the debt collector cannot put the debt on your credit report. It must validate the debt by obtaining a verification of the debt or a copy of a judgment from the creditor. A copy of documents that verify the bill should then be mailed to you.

When you send the collector proof that the debt is not yours or has been satisfied, ask for written confirmation that the collector is not holding you accountable for the debt. Some accounts, even though properly disputed with one collector, may be sold to another. This can happen years after you have successfully disputed an account.

This makes it all the more important to create a record of your experience with the prior collector. Keep your file indefinitely, especially if it contains correspondence that states you are not responsible. State law may keep a collector from suing you after a given period of time. However, there is no statute of limitations on collection efforts. What you thought was a closed file, may later come back to haunt you.

### **How long does the collection agency have to conduct its investigation?**

There is no set time, but, again, the collection agency cannot resume collection action unless it confirms the debt.

## **May a debt collector report negative information on my credit report?**

The Fair Credit Reporting Act (FCRA) says that a disputed account cannot be posted to a consumer's credit report, unless the fact it is being disputed is also noted. Recently, the Fair and Accurate Credit Transactions Act of 2003 (FACTA) updated the FCRA. Within the next year these new guidelines will require that a consumer receive notice before negative information is placed on their credit report.

Until that time, negative information can be placed on your credit report without notifying you beforehand. In addition, your state may have a law that requires notice in some cases. In California, for example, you must be notified before a health or fitness club refers a debt to a collection agency. For more on state collection laws, see [Part 5](#) and [Attachment A](#).

## **Am I liable for the debt if I don't dispute it in 30 days?**

If the matter ends up in court, failure to file a dispute cannot be held against you. The FDCPA (§1692g(c)) says failure to file a dispute does not allow a court to assume you admit liability for the debt. However, being able to establish that you did comply with all statutory requirements may greatly enhance your chances of success. Your goal is to establish the facts and convince the judge or others who decide the matter that you are credible and deserve to have the law applied with its full effect on your behalf.

## **7. How to Complain about a Debt Collector: Tips on Suing**

### **What can I do if a debt collector violates the law?**

If you have exhausted all strategies in dealing with the debt collector as described in this guide and the collector continues to use illegal, unfair and abusive practices, you may file a complaint, sue the collector, or both. We explain how to file a complaint below, and provide tips for suing a collector at the end of this section.

- **Federal Trade Commission.** ([www.ftc.gov](http://www.ftc.gov)) The FTC is the government agency that enforces the FDCPA. It may bring an action in federal district court against a debt collector that violates the law. Understandably, the agency does not have the resources to bring a court action on behalf of an individual or against every collector about which it receives a complaint. But the agency can and does take action against the most egregious offenders.



The FTC's primary source of information about abusive collection practices is through consumer complaints. It offers an online complaint form on its web site, [www.ftc.gov](http://www.ftc.gov). The address for mailing complaints is provided in References, [Part 11](#).

To learn more about the types of debt collector complaints the FTC receives and actions it has brought against collectors, see the agency's most recent report to Congress on the FDCPA, [www.ftc.gov/os/statutes/fdcpa/fdcpa2003rpt.htm](http://www.ftc.gov/os/statutes/fdcpa/fdcpa2003rpt.htm).

- **State Attorney General or State Office of Consumer Protection.** State officials may enforce the FDCPA as well as state collection laws. Before submitting a complaint to your state officials, check to see if your state has its own collection law (see [Part 5](#) and [Attachment A](#)). When writing your complaint letter, be sure to describe a collection agency's actions that violate the FDCPA as well as those that violate the law in your state. Keep detailed notes, correspondence, and recordings of any documents or messages that may indicate the collector has violated state or federal laws.
- **Debt Collector Associations.** The American Collectors Association is a national organization made up of member collection agencies. To become a member, a collection agency must agree to follow the FDCPA and a set of industry standards. A complaint against a member debt collector may be made through the organization's web site, [www.acainternational.org/intcontent.aspx](http://www.acainternational.org/intcontent.aspx) (click on "Contact ACA"), or by writing the Association at the address in [Part 11](#) at the end of this guide.

Debt collectors may also be members of a statewide association. In California, that's the California Association of Collectors. This state organization's web site has a list of member collectors (see [Part 11](#)). To find out whether a collector association has been organized in your state, consult the white pages of your telephone director or try an Internet search.

## What should I include in a complaint to a government agency?

Here are some general tips about writing a complaint letter.

- **Get organized** before you begin to write your complaint. This is where your file will come in handy. Keep good notes of dates, representative's names, and details of any conversations, correspondence or personal contact. Keep originals of all correspondence you send and receive.
- **Create a chronology or timeline** from your file. Always start with the date of the first contact by the debt collector. Your chronology does not have to be elaborate. It can be as simple as putting all your notes, letters and other documents in date order. Attach

*copies*, not originals, of any documents, like a paid receipt, that support your version of events and strengthen your arguments. Keep your originals in your file.

- **Select only *major* points or important details to include in your complaint.** Not every contact by a debt collector amounts to an abusive practice. For instance, it is not necessary to include every telephone call made from a debt collector in your complaint letter -- *unless* the telephone calls are made at odd hours, are harassing, or are calls made to your employer after the collector has been informed that you are not permitted to accept such calls.
- **Summarize minor points.** Frequent contacts that did not include abusive practices, may simply be noted in a summary statement. For example, "Between January 1 and February 1, the collection agency contacted me fifteen times." If you are unsure about what should be included in your complaint, review the prohibited practices under the FDCPA explained in [Part 2](#) and [Part 3](#) in this guide and in publications in the References section in [Part 11](#).
- **Start your letter by giving the first date you were contacted** by the collection agency. This is a critical date. It can go a long way in supporting your complaint or lawsuit if the problem cannot be resolved otherwise. The original date of contact can establish, for example, that you have been attempting to resolve the problem directly with the collector for a long time. This date can also show that the collection agency did not, as required by law, follow up a telephone contact with a written notice within the five days required by law.
- **The tone** of your letter should be business-like and to the point. To hold the attention of the agency official or others who read your complaint, you should briefly state who, what, and when. Be concise. Simply explain the actions by the collector you feel were abusive and violations of the law.

### **May I sue a collection agency?**

Yes. The FDCPA allows individuals and class action plaintiffs to sue in federal or state court within a year of the violation. Under the FDCPA, if you win, you may recover actual damages plus up to \$1,000. Attorney fees and court costs may also be recovered. Members of a class action may recover actual damages plus a total of \$500,000 or one percent of the net worth of the debt collector. Attachment A to this guide, [www.privacyrights.org/fs/fs27plus.htm](http://www.privacyrights.org/fs/fs27plus.htm), may have information about collection laws in your state.

There are many private practice attorneys who specialize in assisting consumers who have experienced violations of state and federal debt collection laws. The web site of the National

Association of Consumer Advocates, [www.naca.net](http://www.naca.net), provides a directory of member attorneys. The search process enables you to find attorneys near you and to specify those with debt collection experience, [www.naca.net/db.php3](http://www.naca.net/db.php3).

### **May I tape record calls from the collector?**

If the collector is verbally abusive when phoning you or engages in other practices in apparent violation of the law, you might want to gather evidence by taping the calls. Such evidence can be invaluable if you file a complaint with the authorities and if you sue the collector. *Be aware* that in a dozen states including California, you need to obtain consent before taping the call, with some exceptions. Check the web site of the Reporters Committee for Freedom of the Press for a 50-state compilation of laws regarding tape recording, [www.rcfp.org/taping](http://www.rcfp.org/taping).

## **8. Debt Collectors and Identity Theft**

### **What if I am a victim of identity theft?**

A call from a collection agency or being denied an extension of credit is often the first clue that something is wrong. When a collection agency contacts you about a bill you know nothing about, you may be the victim of identity theft.

The crime of identity theft is an epidemic that is sweeping the country. Recent surveys show that this crime affects as many as 10 million victims a year. For a summary of recent identity theft surveys and studies, see [www.privacyrights.org/ar/idtheftsveys.htm](http://www.privacyrights.org/ar/idtheftsveys.htm).

If you think someone else opened an account in your name or made charges to your existing account without your permission, you should follow the steps in our Fact Sheet 17a, "Identity Theft: What to Do if It Happens to You," [www.privacyrights.org/fs/fs17a.htm](http://www.privacyrights.org/fs/fs17a.htm).

Be sure to write the collection agency and explain that you are an identity theft victim. See our sample letters in [Attachment B](#) at [www.privacyrights.org/Letters/letters.htm#Debt](http://www.privacyrights.org/Letters/letters.htm#Debt), specifically sample letter 3. In addition, the Identity Theft Resource Center has posted a fact sheet for identity theft victims dealing with collection agencies, [www.idtheftcenter.org/vg116.shtml](http://www.idtheftcenter.org/vg116.shtml).

The FTC also provides resources for identity theft victims, including advice for victims of identity theft who are contacted by collection agencies, at [www.consumer.gov/idtheft/recovering\\_idt.html#28](http://www.consumer.gov/idtheft/recovering_idt.html#28).

We suggest that you ask the collector for copies of documentation such as transaction receipts and statements that are associated with the fraudulent account. You should also ask the collector and the creditor to send you their fraud affidavit form, or use the one provided by the FTC at [www.ftc.gov/bcp/online/pubs/credit/affidavit.pdf](http://www.ftc.gov/bcp/online/pubs/credit/affidavit.pdf). You can fill out this affidavit and use it for several accounts if more than one has been opened in your name by the imposter.

Recent amendments to the FCRA give identity theft victims new rights when debts have been referred to a collection agency. The new law, titled the Fair and Accurate Credit Transactions Act (FACTA), takes effect in late 2004. When the new law takes effect, if a debt collector learns that you may be the victim of identity theft, the collector must:

- Notify the original creditor about the fraud or identity theft.
- Give you information about the debt, such as account applications and statements.

Recent changes in the law have also increased the burden on businesses to protect your information and provide for recovery from both the business and from various victim funds where warranted.

## **9. Debt Collectors and Your Job**

The loss of a job is just one result of abusive debt collection practices that Congress noted when it passed the FDCPA. However, the federal law does not go very far in protecting you against intimidation and embarrassment when a collector calls your place of employment and speaks to your boss or co-workers.

### **Can a collection agency contact my boss?**

A debt collector may contact anyone other than you, but *only* to find out where you live or your telephone number. This includes your employer, who is treated like any other third-party contact under the FDCPA. Unfortunately, the FDCPA creates no specific restrictions

on contacts with an employer. Although not required to do so, a collection agency *should* contact your boss only as a last resort.

The laws of your state may have stricter rules about contact with your employer. In California, for example, a collection agency must first try to contact your employer in writing before making a call. If your employer does not respond within 15 days, the collection agency may then call.

### **Can a collection agency send legal documents to my employer?**

Papers that are connected with your job may be sent to your employer. A judgment or court order that garnishes your salary is an example.

### **Can a collection agency call me at work?**

The FDCPA says a collector cannot call you at work if your employer does not allow you to receive such calls or if you have asked (preferably in writing) that they not call you there. If you are first called at home, make sure to tell the collection agency that it cannot call you at work if that is your wish. Follow up with a written request.

Keep detailed notes about each violation of this request, making sure that both you and any witnesses to the contact will be able to testify at a much later time if you decide to take legal action against the collector. One ideal way is to have witnesses write a statement specifying the date, time, and details of the contact. Each of you should retain a copy. See sample letter 4 in [Attachment B](#) to this guide, [www.privacyrights.org/Letters.letters.htm#Debt](http://www.privacyrights.org/Letters.letters.htm#Debt).

### **Does my employer have other ways of finding out about a collection?**

Collection action may appear on your credit report with the three credit report agencies: Experian, TransUnion, and Equifax. If you apply for a new job or are considered for a promotion or transfer in your current job, the federal Fair Credit Reporting Act (FCRA) allows employers to obtain your credit report as part of an employment background check. In this way, your employer may find out about any accounts you have in collections and may make decisions based on that information.

For more on employment background checks and credit reports, see:

- PRC Fact Sheet 16 "Employment Background Checks: A Jobseeker's Guide"  
[www.privacyrights.org/fs/fs16-bck.htm](http://www.privacyrights.org/fs/fs16-bck.htm).
- Fact Sheet 16a, "Employment Background Checks in California"  
[www.privacyrights.org/fs/fs16a-califbck.htm](http://www.privacyrights.org/fs/fs16a-califbck.htm).
- FTC publication, "Using Consumer Reports: What Employers Need to Know,"  
[www.ftc.gov/bcp/online/pubs/buspubs/credempl.htm](http://www.ftc.gov/bcp/online/pubs/buspubs/credempl.htm).

## **10. Debt Collectors and Medical Bills**

Collection of medical debt is a major consumer issue. A recent study by the Federal Reserve Board found that nearly half of all collection actions appearing on consumer credit reports are for collection of unpaid medical bills.

[www.federalreserve.gov/pubs/bulletin/2003/2003lead.pdf](http://www.federalreserve.gov/pubs/bulletin/2003/2003lead.pdf)

### **May a doctor or hospital refer an overdue medical bill to a collection agency?**

Yes. HIPAA, the medical privacy rule that became effective in April 2003, allows a health care provider to disclose information to a collection agency. HIPAA also says an overdue bill can be reported to a credit reporting agency.

Collection of an unpaid bill is considered a payment activity under HIPAA. Thus, it is not necessary that you give your consent before a medical bill is referred to a collection agency or before a negative entry is placed on your credit report.

However, you may dispute a medical bill with the health care provider or a collection agency. If you do, the fact that you have lodged a dispute should also be revealed if a negative report is made to your credit report.

### **Can my medical information be disclosed to a collector or a credit reporting agency?**

HIPAA says the healthcare provider or health plan may disclose *only* the following information about you to a collection agency or credit bureau.

- Name and address.
- Date of birth.

- Social Security number.
- Payment history.
- Account number.
- Name and address of the one claiming the debt.

Of course, the name of the healthcare provider may contain clues to the medical condition of you or members of your family. Recent amendments to the federal FCRA enacted by Congress in 2003, the Fair and Accurate Credit Transactions Act, change the way medical collections appear in credit reports. The names of healthcare providers must be masked if they would disclose the type of medical condition for which you sought care. Watch our web site for updates on the recent FCRA amendments, expected to go into effect in late 2004.

### **Do I have a right to dispute a medical collection?**

You can always dispute a medical bill with your healthcare provider or health plan. However, we know of no national law that provides standards in disputing medical bills. The federal Fair Credit Billing Act (FCBA) only applies to open-ended credit accounts such as credit card and revolving charge accounts like department store charge accounts. (15 USC §1601)

For more on when the FCBA applies, see the FTC's publication "Fair Credit Billing," [www.ftc.gov/bcp/online/pubs/credit/fcb.htm](http://www.ftc.gov/bcp/online/pubs/credit/fcb.htm), as well as the text of the law, [www.ftc.gov/os/statutes/fcb/fcb.pdf](http://www.ftc.gov/os/statutes/fcb/fcb.pdf).

However, there is a dispute procedure you can use if the debt is referred to an outside collection agency. When this happens, a medical bill, like any other debt, is subject to the FDCPA dispute procedures. For more on filing a dispute under the FDCPA, see [Part 7](#).

To learn more on disclosures to collection agencies and credit bureaus by HIPAA "covered entities," see PRC Fact Sheet 8a, "HIPAA Basics: Medical Privacy in the Electronic Age," [www.privacyrights.org/fs/fs8a-hipaa.htm#7](http://www.privacyrights.org/fs/fs8a-hipaa.htm#7).

## 11. References

### Federal and State Laws

#### Federal Laws

- Fair Debt Collection Practices Act, 15 USC §1692-1692o  
[www.ftc.gov/os/statutes/fdcpa/fdcpact.htm](http://www.ftc.gov/os/statutes/fdcpa/fdcpact.htm)  
[www4.law.cornell.edu/uscode/15/1692.html](http://www4.law.cornell.edu/uscode/15/1692.html)
- Fair Credit Reporting Act, 15 USC §1681 et seq.  
[www.ftc.gov/os/statutes/fcra.htm](http://www.ftc.gov/os/statutes/fcra.htm)
- Fair Credit Billing Act, 15 USC §1601 et seq.  
[www.ftc.gov/os/statutes/fcb/fcb.pdf](http://www.ftc.gov/os/statutes/fcb/fcb.pdf)
- Federal Trade Commission Act, 15 USC §41-58  
[www4.law.cornell.edu/uscode/15/41.html](http://www4.law.cornell.edu/uscode/15/41.html)
- Fair and Accurate Credit Transactions Act (FACT) of 2003  
Public Law No. 108-159 (December 4, 2003)  
<http://thomas.loc.gov/cgi-bin/query/D?c108:6:./temp/~c108Hkngqr:>  
The Federal Trade Commission has posted the updated text of the Fair Credit Reporting Act which incorporates the amendments of FACT,  
[www.ftc.gov/os/statutes/031224fcra.pdf](http://www.ftc.gov/os/statutes/031224fcra.pdf)

#### California Law

- Fair Debt Collection Practices Act, California Civil Code §1788, et seq.  
[www.leginfo.ca.gov](http://www.leginfo.ca.gov)

#### Laws in Other States

- See [Attachment A](#), [www.privacyrights.org/fs/fs27plus.htm](http://www.privacyrights.org/fs/fs27plus.htm)

#### Government Agency Contacts

- **Federal Trade Commission**

**Consumer Response Center**  
600 Pennsylvania Ave. N.W.  
Washington, D.C. 20580  
Telephone: (877) FTC-HELP (877-382-4357)  
TDD: (202) 326-2502  
Web: [www.ftc.gov](http://www.ftc.gov) – Click "File a Complaint" on home page.



- **Soldiers and Sailors Civil Relief Act (SSCRA)**

[www-tradoc.army.mil/opja/la/sscra.htm](http://www-tradoc.army.mil/opja/la/sscra.htm)

- **California Attorney General**

Public Inquiry Unit  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Telephone: (800) 952-5225 and (916) 322-3360  
Web: [www.ag.ca.gov/consumers/mailform.htm](http://www.ag.ca.gov/consumers/mailform.htm)  
Read: "Collection Agencies,"  
[www.caag.state.ca.us/consumers/general/collect.htm](http://www.caag.state.ca.us/consumers/general/collect.htm)

- **State Attorneys General Offices**

National Association of Attorneys General,  
[www.naag.org](http://www.naag.org)

- **Consumer Protection Offices in the States**

Federal Government's Consumer Action Web site  
[www.consumeraction.gov/state.shtml](http://www.consumeraction.gov/state.shtml)

## **Other Resources**

- Attorney Referral Service of the National Association of Consumer Advocates (NACA)  
Its web site, [www.naca.net](http://www.naca.net), offers a national directory of member attorneys. The search process enables you to specify lawyers with debt collection experience, [www.naca.net/db.php3](http://www.naca.net/db.php3)
- National Consumer Law Center  
The NCLC publishes the book, *NCLC Guide to Surviving Debt: A Guide for Consumers*, [www.nclc.org](http://www.nclc.org) (no endorsement implied).
- Nolo Press  
Nolo Press publishes the book, *Money Troubles: Legal Strategies to Cope with Your Debts*, by Robin Leonard, [www.nolo.com](http://www.nolo.com) (no endorsement implied). The web site also provides tips for consumers.
- American Collectors Association  
P.O. Box 39106  
Minneapolis, MN 55439-0106  
Telephone: (612) 926-6547  
Fax: (612) 926-1624  
Email: [aca@collector.com](mailto:aca@collector.com)  
Web: [www.collector.com](http://www.collector.com)

Complaints about members: [www.acainternational.org/intcontent.aspx](http://www.acainternational.org/intcontent.aspx), Click on "Contact ACA."

- California Association of Collectors  
P.O. Box 254490  
Sacramento, CA 95865-4490  
Telephone: (916) 929-2125  
For information and to complain about members: (800) 316-2262  
Web: [www.calcollectors.net](http://www.calcollectors.net)
  
- National Foundation for Consumer Credit, Inc.  
8611 Second Avenue, Suite 100  
Silver Spring, MD 20910  
Telephone: (800) 388-2227  
Web: [www.nfcc.org](http://www.nfcc.org)
  
- Better Business Bureau  
[www.bbb.org](http://www.bbb.org)

## **Federal Trade Commission Publications and Links**

- "Credit and Your Consumer Rights, "  
[www.ftc.gov/bcp/online/pubs/credit/crdright.htm](http://www.ftc.gov/bcp/online/pubs/credit/crdright.htm)
- "Fair Debt Collection,"  
[www.ftc.gov/bcp/online/pubs/credit/fdc.htm](http://www.ftc.gov/bcp/online/pubs/credit/fdc.htm)
- Fair Debt Collection Practices Act Home Page,  
[www.ftc.gov/os/statutes/fdcpajump.htm](http://www.ftc.gov/os/statutes/fdcpajump.htm)
- "Ads Promising Debt Relief May be Offering Bankruptcy,"  
[www.ftc.gov/bcp/online/pubs/alerts/bankrupt.htm](http://www.ftc.gov/bcp/online/pubs/alerts/bankrupt.htm)
- FTC Staff Commentary on the FDCPA,  
[www.ftc.gov/os/statutes/fdcpa/commentary.htm#805](http://www.ftc.gov/os/statutes/fdcpa/commentary.htm#805)
- "Using Consumer Reports: What Employers Need to Know,"  
[www.ftc.gov/bcp/online/pubs/buspubs/credempl.htm](http://www.ftc.gov/bcp/online/pubs/buspubs/credempl.htm).
- "Cosigning a Loan,"  
[www.ftc.gov/bcp/online/pubs/credit/cosign.htm](http://www.ftc.gov/bcp/online/pubs/credit/cosign.htm).
- Identity Theft Home Page,  
[www.consumer.gov/idtheft](http://www.consumer.gov/idtheft)
- FTC's Identity Theft Fraud Affidavit,  
[www.ftc.gov/bcp/online/pubs/credit/affidavit.pdf](http://www.ftc.gov/bcp/online/pubs/credit/affidavit.pdf)
- "Recovering from Identity Theft"  
[www.consumer.gov/idtheft/recovering\\_idt.html#28](http://www.consumer.gov/idtheft/recovering_idt.html#28)

## **Fact Sheets of the Privacy Rights Clearinghouse and Identity Theft Resource Center**

- ITRC Fact Sheet 116, "Collection Agencies and Identity Theft"  
[www.idtheftcenter.org/vg116.shtml](http://www.idtheftcenter.org/vg116.shtml)
- PRC Fact Sheet 6, "How Private Is My Credit Report,"  
[www.privacyrights.org/fs/fs6-crdt.htm](http://www.privacyrights.org/fs/fs6-crdt.htm)
- PRC Fact Sheet 17a, "Identity Theft, What to Do When It Happens to You,"  
[www.privacyrights.org/fs/fs17a-IT.htm](http://www.privacyrights.org/fs/fs17a-IT.htm).
- PRC Fact Sheet 16 "Employment Background Checks: A Jobseeker's Guide"  
[www.privacyrights.org/fs/fs16-bck.htm](http://www.privacyrights.org/fs/fs16-bck.htm)
- PRC Fact Sheet 16a, "Employment Background Checks in California"  
[www.privacyrights.org/fs/fs16a-califbck.htm](http://www.privacyrights.org/fs/fs16a-califbck.htm)

## **Attachments to This Guide**

- Attachment A: State laws and state publications are available at:  
[www.privacyrights.org/fs/fs27plus.htm](http://www.privacyrights.org/fs/fs27plus.htm).
- Attachment B: Sample Letters are available on line at:  
[www.privacyrights.org/Letters/letters.htm#Debt](http://www.privacyrights.org/Letters/letters.htm#Debt)  
  - Sample Letter #1 – Dispute the Debt
  - Sample Letter #2 – Stop Contact by Collection Agency
  - Sample Letter #3 – Identity Theft Victim --Stop Contact By Collection Agency
  - Sample Letter #4 – Stop Contact With Employer and Others
  - Sample Letter #5 – Complain about a Collection Agency
  - Sample Letter #6 – Stop Contact about Someone Else's Debt

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