Debt Collection Review

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This presentation is not meant to serve as a substitute for reading any Act or case discussed, seeking administrative opinions, etc. The presentation merely serves as an introduction to, and overview of, the statutes, cases and interpretations discussed.
Roadmap

• SCDCA Overview
• GAO Credit Card Debt Collection Report
• FTC Enforcement Actions
• State & Federal Debt Collection Laws
• Areas for Improvement
• Other SC Laws
• Resources
SCDCA Overview

• Consumer Services & Education
• Public Information
• Consumer Advocate
• Administration
• Legal Division
Figure 1: Credit Card Delinquency Rates, 1991–2009 (first quarter)

2008: >$23 billion 30-180 days delinquent

Source: GAO analysis of Federal Reserve data.
Table 1: Six Largest Credit Card Issuers by Outstanding Credit Card Loans as of December 31, 2007

<table>
<thead>
<tr>
<th>Card issuer</th>
<th>Outstanding loans</th>
<th>Percentage of total market</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citigroup Inc.</td>
<td>$196,811,000,000</td>
<td>23.5</td>
</tr>
<tr>
<td>Bank of America</td>
<td>183,691,119,000</td>
<td>22.0</td>
</tr>
<tr>
<td>JPMorgan Chase &amp; Co.</td>
<td>148,391,000,000</td>
<td>17.7</td>
</tr>
<tr>
<td>Capital One Financial Corp.</td>
<td>62,432,633,000</td>
<td>7.5</td>
</tr>
<tr>
<td>Discover Financial Services Inc.</td>
<td>52,302,410,000</td>
<td>6.3</td>
</tr>
<tr>
<td>American Express</td>
<td>49,251,563,000</td>
<td>5.9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$692,879,725,000</strong></td>
<td><strong>82.9</strong></td>
</tr>
</tbody>
</table>

Source: GAO analysis of data from Card Industry Directory.

Approx. 83% of outstanding debt
GAO Report cont…

• Credit Card Usage
  – 1993~ $475 billion
  – 2007~ $1.9 trillion

• Credit Card Charge-Offs
  – 1st quarter 2008 ~$4.2 billion (4.7%)
  – 1st quarter 2009 ~ $7.5 billion (7.6%)
• Picture of the Debt Collection Industry
  – *Traditional Debt Collectors*
    • 2006 (US Census Bureau data)
      – 4,400 debt collection companies
      – Employed 143,000
      – Majority = privately held
      – 43% employed 4 or fewer people
      – 3% had 500+ employees
      – 4 largest companies represent approx. 19% of total
        industry revenues (2002 stat.)
GAO Report cont…

– *Debt Buyers*
  - Exact number unknown
  - 10 buyers responsible for 81% of debt purchased in 2007
  - $\frac{1}{2} = \text{publicly traded}$
Figure 2: Illustrative Example of the Lifecycle of a Sample Delinquent Credit Card Account

- **Delinquent account**: Credit card issuer uses its internal collection department operations.
- **Third-party collector #2**: Issuer places account with a third-party collection agency.
- **Debt buyer**: Issuer sells the account.
- **Debt buyer #2**: Debt buyer sells the account.
- **Third-party collector**: Debt buyer #2 places the account with a third-party agency.

Collection efforts continue until collection is successful, statute of limitations runs out, or owner of debt otherwise ceases collection efforts.

Source: GAO.
**Table 2: Estimated Price Ranges for Credit Card Debt, Per Dollar of Account Face Value, March 2007 and January 2009**

<table>
<thead>
<tr>
<th>Type of Debt</th>
<th>March 2007</th>
<th>January 2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fresh: 91 days to 6 months past due and never placed</td>
<td>$0.12 - $0.17</td>
<td>$0.055 - $0.075</td>
</tr>
<tr>
<td>with a collection agency</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Primary: 6 to 12 months past due and never placed</td>
<td>$0.08 - $0.12</td>
<td>$0.035 - $0.05</td>
</tr>
<tr>
<td>with a collection agency</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secondary: 12 to 24 months past due and/or previously</td>
<td>$0.055 - $0.09</td>
<td>$0.02 - $0.03</td>
</tr>
<tr>
<td>placed with 1 collection agency</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tertiary: More than 2 years past due and/or previously</td>
<td>$0.03 - $0.05</td>
<td>$0.01 - $0.02</td>
</tr>
<tr>
<td>placed with 2 collection agencies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quad: More than 3 years past due and/or previously</td>
<td>$0.01 - $0.025</td>
<td>$0.004 - $0.01</td>
</tr>
<tr>
<td>placed with 3 collection agencies</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Kaulkin Ginsberg, InsideARM.

Note: The definitions in this table for fresh, primary, secondary, tertiary, and quad debt are those used by Kaulkin Ginsberg, but these definitions can vary across the debt collection industry.

*Decrease in consumer's ability to pay*
GAO Report cont...

- Complaints

<table>
<thead>
<tr>
<th>Year</th>
<th>Total number of consumer complaints received</th>
<th>Total number of credit card complaints received</th>
<th>Total number of credit card FDCPA complaints received</th>
<th>FTC Total number of debt collection complaints about original creditors</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>44,328</td>
<td>15,229</td>
<td>2,257</td>
<td>20,588</td>
</tr>
<tr>
<td>2005</td>
<td>47,714</td>
<td>16,579</td>
<td>1,954</td>
<td>23,637</td>
</tr>
<tr>
<td>2006</td>
<td>43,319</td>
<td>13,502</td>
<td>1,625</td>
<td>21,465</td>
</tr>
<tr>
<td>2007</td>
<td>49,727</td>
<td>17,064</td>
<td>1,641</td>
<td>20,095</td>
</tr>
<tr>
<td>2008</td>
<td>63,024</td>
<td>19,023</td>
<td>2,434</td>
<td>26,615</td>
</tr>
</tbody>
</table>

Source: GAO analysis of FDIC, Federal Reserve, FTC, OCC, and OTS data.
GAO Report cont…

– **FTC Complaints**
  
  • 2008
    – 79,000 (19%)
    – 34% growth from 2004-2008

• **Most Common Complaints**
  
  – Misrepresentation of amount or legal status of debt
  – Excessive phone calls
  – Telephone calls from collectors looking for other people
  – Use of profane, obscene or abusive language
  – Threatening to sue if payment not made
GAO Report cont…

• Complaints cont…
  – *SCDCA*
    • Always in top 3 of complaints
  
  – *Nat’l Assoc. of Attorneys General*
    • 2008= #1 Complaint Category
  
  – *BBB~ 2008*
    • 16,000 complaints
    • b/ 2005-2008 = 6\textsuperscript{th} most complained about industry
GAO Report cont…

• Recent FTC Cases
    • Offered credit card to consumers with charged-off debt
    • Bus. Sd debt would be reported as “paid in full” once transferred to new credit card
    • Consumers were instead enrolled in debt repayment plan & didn’t receive credit card until 25-50% of balance paid
    • Also charged with harassing consumers
FTC Enforcement Actions

– FTC v. Whitewing Financial Group
  • Collection of time-barred debts
    – misrepresenting status of debts
    – misrepresenting that lawsuit had been filed
    – Improper communications, including inconvenient times and places
FTC Enforcement Actions

– **FTC v. Citigroup**
  - Unfair and abusive lending and collection practices
  - Record $215,000,000 settlement
FTC Enforcement Actions

- **FTC v. Nationwide Credit**
  - False and misleading representations
  - Failure to send required validation notices
  - Failure to verify debts
  - Revealed debts to third parties

Previous cases against company

$1 million civil penalty
Debt Collection

- SC & Federal Law Application
- SC & Federal Debt Collection Basics
- Federal Requirements/ Protections
- Other SC Debt Collection Laws
Debt Collection cont…

• **Application**
  – South Carolina
    • *Unconscionable Debt Collection Practices Act*
      – Creditors
      – 3rd Parties
      – Repossession Agents
  – Federal
    • *Fair Debt Collection Practices Act*
      – 3rd parties
      – Creditors incognito
      – As of 1986 an amendment included attorneys who collect debts on a regular basis
Debt Collection cont…

• **State & Federal Law Basics**
  – **Communication**
    • Via mail, fax, telephone, in person
    • Allowed between 8am and 9pm
    • Can contact 3rd parties
      – Your phone number
      – Your address
      – Where you work
  • Attorney
  • Cannot call repetitively in a 24-hour period
Debt Collection cont…

• State & Federal Law Basics cont…

Harassment

• Debt collectors may **not** harass, oppress, or abuse you or any third parties they contact. They may not:
  – Use threats of violence or harm
  – Publish a list of consumers who refuse to pay their debts
  – Use obscene or profane language
  – Repeatedly use the telephone to annoy someone
Debt Collection cont…

**False statements**

- Debt collectors may not:
  - Falsely imply that they are attorneys or government representatives
  - Falsely imply that you have committed a crime
  - Falsely represent that they operate or work for a credit bureau
  - Misrepresent the amount of your debt
  - Indicate that papers being sent to you are legal forms when they are not
  - Indicate that papers being sent to you are not legal forms when they are
Debt Collection cont…

• Debt collectors also may not state that:
  – You will be arrested if you do not pay your debt
  – They will seize, garnish, attach, or sell your property or wages, unless the collection agency or creditor intends to do so, and it is legal to do so
  – Legal actions, such as a lawsuit, will be taken against you, when such action legally may not be taken, or when they do not intend to take such action
Debt Collection cont...

- **Debt collectors may not:**
  - Give false credit information about you to anyone, including a credit bureau
  - Send you anything that looks like an official document from a court or government agency when it is not
  - Use a false name
Debt Collection cont…

Unfair practices

• Debt collectors may not
  – Collect any amount greater than your debt, unless your state law permits such a charge
  – Deposit a post-dated check prematurely
  – Use deception to make you accept collect calls or pay for telegrams
  – Take or threaten to take your property unless this can be done legally
  – Contact you by postcard
Debt Collection cont…

• State & Federal Law Basics cont…
  – Stopping Contacts At Work
    • Letter (you or your employer)
      – Cease contact
    • Limited Contact
      – Verify employment

TIP: Keep copy for yourself & send certified mail, return receipt requested!
Debt Collection cont…

- Federal Requirements/ Protections (3rd party ONLY!)

- Stopping Contact
  - At Home
    - Letter
    - Limited Contact
      » No further contact OR
      » Specific action will be taken

**TIP:** Keep copy for yourself & send certified mail, return receipt requested!
Debt Collection cont…

• Federal Requirements/ Protections
  – Notice
    • In 1st communication or within 5 days of
    • Must Contain:
      – Amount of debt
      – Name of creditor
      – Statements:
        » 30 days to dispute or = assumed valid
        » Verification
        » Name of original creditor
Debt Collection cont…

• Federal Requirements/ Protections cont…
  – *Letter*
    • Within 30 day period
    • Send registered mail, return receipt requested and regular mail
    • State that debt or any part of debt is in dispute
      – Ie: Not yours, amount listed is wrong, etc
    • Be specific
    • Same process for original creditor info

  – *Debt Collector Must:*
    • Stop attempting to collect
    • Must seek verification
      – Ie: contract, last billing statement, etc
Debt Collection cont…

• Federal Requirements/ Protections cont…
  – You have the right to sue a collector in a state or federal court within one year from the date the law was violated.

  – If you win, you may recover money for the damages you suffered plus an additional amount up to $1,000.

  – Court costs and attorney's fees also can be recovered.

  – A group of people also may sue a debt collector and recover money for damages up to $500,000, or one percent of the collector's net worth, whichever is less.
Debt Collection cont…

- **South Carolina Consumer Remedies**
  - Consumers have a right to sue a collector for violating the Unconscionable Debt Collection Practices Act
  - Can ask for actual damages and a statutory penalty of not less than $100 and not more than $1,000.
  - Can be combined with Federal suit

Up Next: Areas for Improvement
Areas for Improvement

• Top Issues
  – Need to clarify what constitutes “verification” of a debt
  – Collecting on Time-Barred Debt
    • Misconception can be sued
    • Reviving the debt
  – Suing for Time-Barred Debt
    • Consumer defaults (defense)
Areas for Improvement cont…

Figure 3: How Account Information Is Passed among Debt Buyers

Current owner of debt submits request for account media (such as billing statements, cardmember agreements, card applications) to the previous owner. The request is passed along until it reaches the issuer.

Upon request, issuer provides account media to the initial debt buyer, who passes it on to subsequent buyers until it reaches the current owner.

Source: GAO.
Areas for Improvement cont...

- Proposed Legislation 2011
  - *Debt Collection Agency Licensing Act (H3383)*
  - *Personal Property Recovery Act (H3549)*

→ Can be found at [www.scstatehouse.gov](http://www.scstatehouse.gov)
Areas for Improvement

• Federal Law Gaps & Ambiguities
  – FTC doesn’t have rulemaking authority= statute would have to be amended

  – New Consumer Financial Protection Agency had rulemaking authority
    • Go live date = July 21, 2011
Repairing A Broken System

Protecting Consumers in Debt Collection Litigation and Arbitration

Federal Trade Commission
July 2010
FTC Report

• Debt Collection Litigation Concerns
  – Suits filed based on insufficient evidence
  – Failure to properly notify consumers of suits
  – High # of default judgments
  – Improper garnishment
  – Suing or threatening to sue on time-barred debts
FTC Report cont…

• **Debt Collection Arbitration Concerns**
  – Binding consumers to arbitration w/o meaningful choice
  – Bias
  – Procedural unfairness
  – Cost of arbitration

Up Next: Other SC Laws
Other SC Debt Collection Laws

Collection on Consumer Debt in SC

- 2 types of default in consumer transaction
  - 1. Putting collateral @ risk
    » Ie: Failing to maintain car insurance
  - 2. Failure to make payments
    » creditor has the right to file suit to collect on the contract or repossess collateral ……. 
• Repossession
  – 3 legal means of repossession:
    • 1. *Voluntary repossession*
      – The consumer has the right to give the collateral back to the creditor.
      – If the consumer does so freely the repossession is considered to be voluntary.
      – Notice of Right to Cure does not have to be given when the consumer voluntarily surrenders the collateral.
      – A repossession is not voluntary if the creditor uses force or deception to take possession of the collateral.
• 2. *Self-help repossession.*
  
  – the creditor may go to pick up the collateral or send a repossession company to pick it up.
  
  – The creditor does not have to go through the court or have the consumer’s permission to do a self-help repossession.
  
  – the creditor cannot take any action that may lead to a breach of the peace.
    
    » If the consumer objects, the creditor should leave.
    
    » Any threat or use of force is a breach of the peace.
    
    » Also, a creditor may not enter a person’s home without permission.
Other SC Laws cont...

3. A claim and delivery action in court.
   - begins with a Summons and Complaint, but it also has a demand for immediate possession of the collateral.
   - The consumer = notified that he or she has a right to a hearing before the judge before possession of the collateral is given to the creditor.
   - The consumer must ask for this hearing within five days after the Summons and Complaint are served.
   - The consumer still has the full thirty (30) days to file a complete Answer.
   - If the judge rules that the creditor has the right to immediate possession, a court order is entered and law enforcement may take possession of the property even if it is inside the consumer’s home.
Other SC Laws cont…

• **Repossession cont…**
  - Before engaging in self-help or claim & delivery, creditor must give consumer a Right to Cure Notice.

• **Right to Cure**
  - Missing req’d payment ONLY
  - Send after 10 days in default (11\textsuperscript{th} day)
  - 20 days from letter to “cure”
  - Effect- default never occurred
  - Number of notices:
    - Closed ended (auto) = 1
    - Open ended (credit card) 1 every 12 months
Other SC Laws cont…

• **Filing a Court Action**
  – To collect amount owed, OR To collect deficiency balance:
  – Suit must be filed in the county where the consumer lives, except when the collateral is real estate = must be filed in the county where the property is located.
  – The lawsuit begins when the creditor files a Summons and Complaint with the court and has them served on the consumer.
  – If the amount in issue is $7,500.00 or less the action may be brought in magistrate’s court. If it is more than this amount it must be brought in the Court of Common Pleas, which is at the county courthouse.
Other SC Laws cont...

• **Filing a Court Action cont...**
  
  — Once the Summons and Complaint have been served, the consumer has thirty (30) days to file and serve a written Answer with the court and the creditor who filed the suit.
  
  — Failure to file an Answer means the consumer loses and the creditor is entitled to a judgment. (default)
  
  — The creditor may also get a judgment if the consumer admits owing the money or if the case goes to trial and the judge or jury rules against the consumer.
Other SC Laws cont...

- **Collection of a Money Judgment**
  - Judgment entered
  - Auto lien on real prop. if cty crthouse.
  - Other court = must record
  - **Execution to sheriff**
    - Looking for personal & real property to take and sell
    - *If nulla bona...*

- **Supplemental Proceedings**
  - If no prop. found, court hearing to determine what D has
• Collection of Judgment cont...

Common exempt property includes:

<table>
<thead>
<tr>
<th>Property</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>residence or burial plot</td>
<td>first $50,000 of the consumer’s interest (maximum $100,000 if jointly held)</td>
</tr>
<tr>
<td>(homestead exemption)</td>
<td></td>
</tr>
<tr>
<td>vehicle</td>
<td>first $1,200 of the consumer’s interest</td>
</tr>
<tr>
<td>clothing and household goods</td>
<td>first $2,500 of the consumer’s interest</td>
</tr>
<tr>
<td>personal jewelry</td>
<td>first $500 of the consumer’s interest</td>
</tr>
<tr>
<td>professional books or tools of the trade</td>
<td>first $750 of the consumer’s interest</td>
</tr>
<tr>
<td>cash (when no homestead exemption)</td>
<td>$1,000</td>
</tr>
</tbody>
</table>
Other SC Laws cont...

- **Limits on Creditor’s Remedies**
  - *Deficiency Judgment*
    - The law does not allow the creditor to seek a deficiency judgment if the seller’s original selling price to the consumer was $4,950.00 or less. (37-5-103)

- **Unconscionability**
  - Unconscionable Contract
    - Generally = unconscionable when the contract in whole or in part is so one-sided that there is no reasonable belief in fair dealing
    - Ie:
      - when the creditor has no reasonable belief that the consumer can repay the debt
      - when the consumer cannot realistically receive any benefit from the goods or services that are a part of the contract
Other SC Laws cont...

• Unconscionable Practices
  – for the creditor to take the consumer’s household goods as collateral, unless the credit is used to purchase those goods.
  – Items that cannot be taken as collateral include:
    » the consumer’s clothing, furniture, appliances, kitchenware, and one radio and one television.
  – Some items are not protected and can be used as collateral.
    » bicycles, computers and other electronic equipment, jewelry (except wedding rings), and a child’s car seat.

*It is up to the judge to decide if the contract in whole or part is unconscionable. If the judge decides that it is, he or she can void the whole or any part of the contract.*
Other SC Laws cont...

• **Statute of Limitations**
  
  – *Contracts*
    
    • General = 3 years (includes unsecured credit cards)
    
    • Secured transaction = 6 years (includes store credit card)
  
  – *Real Estate*
    
    • 20 years (mortgage of real property)
  
  – *Judgments*
    
    • 10 years
Other SC Laws cont...

• Garnishment
  • Prohibited UNLESS:
    – $$ owed to government
    – $$ owed for child support or alimony
    – Garnishment order issued in another state where consumer was a resident
Options for Consumers

• Self Help
  • Make a Budget… and stick to it!

Budgeting Tips
  – Write it Down
  – Decide if Purchase = Need? Want?
  – Borrow only what you can repay
  – Read and understand the credit agreement
  – Shop around for Credit
    • OPT OUT : 1-888-5-OPTOUT
    • Pay all debts on time- best before interest starts!
Options for Consumers cont…

• Keep in Contact with Your Creditors

• Negotiate
  – Try to work out a modified payment plan you can afford
  – Creditors often “write-off” debt after you haven’t paid for 180 days. Results= hit on credit rating, still owe the debt. Most are still willing to work with you.
  – Get any work outs in writing

• Keep Good Records

• Dispute Own Credit Report (Stay Tuned)
Options for Consumers cont…

• Hire Help
  – Debt Management, Debt Consolidation, etc.
  – Credit Repair, etc.
  – Debt Settlement, Debt Negotiation, Foreclosure Assistance, etc.
SC Consumer Credit Counseling Act (SCCCCA)

- Effective → December 2, 2005
- Climate
- *Why “Consumer Credit Counseling” Act*
SCCCCA: Purpose

- Rights for Consumers when being contacted by or hiring a:
  - Debt Management Businesses
  - Credit Repair Businesses
  - Debt Settlement Businesses

- REGARDLESS of whether or not the business is located in South Carolina!!!
SCCCCA: Definitions

• “Receiving or offering to receive funds from a consumer for the purpose of distributing the funds among the consumer's creditors in full or partial payment of the consumer's debts”

• “Improving or offering to improve a consumer's credit record, history, or rating”

• “Negotiating or offering to negotiate to defer or reduce a consumer’s obligations with respect to credit extended by others”
SCCCCA: Definitions cont...

• **Debt Management Businesses**
  – What Do They Do?
    • *Negotiate*
    • *Consolidate*
    • *Send Payments*
  
  – Is This Right For Me?
    • *Budget Analysis*

– Your Responsibilities
  • *Checking Up*
SCCCCA: Definitions cont...

• **Credit Repair Businesses**
  – What Do They Do?
    • *Credit Report (Your help)*
    • *Letters*
      – Incorrect Info
        » No one can remove information that is accurate and timely
      – Credit Reporting Agencies
      – Creditors

{**More to come on Credit Repair later...**}
SCCCCA: Definitions cont...

- Debt Settlement/ Foreclosure Assistance
  - What Do They Do?
    - Negotiate
    - Send Payment?
    - Types of Settlement/ Negotiation

- Problems
  - Saving Money
  - Time
  - Creditor Action
SCCCCA: Requirements

Be Licensed by SCDCA!!!

http://www.scconsumer.gov/licensing/credit_counseling/licensed_counselors.pdf

• Application for Organization and Credit Counselors
• Bond – at least $25k
• Financial Education Session
• Budget Analysis/ Contract
SCCCCA: Contract

Credit Counseling Organizations MUST:

- Describe services
- Tell you how much their services cost
- Tell you how long it will take to get results
- Have a written contract & give you a copy
SCCCCA: Fees*

Initial Consultation Fee  ________________  $50
Plan Enrollment Fee  ________________  $30
Monthly Maintenance Fee  ________________  $10 per
($50 max)
Reinstatement Fee  ________________  $25

*Businesses can charge UP TO these amounts. All credit counseling businesses cannot charge every fee listed- it is dependant on the services provided.
SCCCCA: Consumer Rights

- **Cancel**
  - Anytime
  - 10 days notice
  - Refund

- **SUE**
  - 3 years
  - Knew/Should have known
SCCCCA: Prohibitions

• In General
  – Referral fees
    • Situation (3rd Party)
  – Ask consumer to waive right
    • Ex: Right to sue
  – Fraudulent, deceptive, or misleading acts (including advertising)
  – Etc.
SCCCCA cont...

–BEWARE ~ The Scams

We have the SECRET to lowering credit card debt!

Settle your debt for pennies on the dollar!

Lower your credit card payment guaranteed!
SCCCCA cont...

- **Common Scams**
  - Promises that can’t be delivered
  - Undisclosed fees
  - Undisclosed Consequences
  - Not Delivering Service

- **Don’t Trust a Company If They:**
  - Ask you to lie
  - Make Promises/ Guarantees
  - Have No Written Contract / Services in Writing
  - Ask for Up Front Payment
SCCCCA: Consumer Complaints

• Complaint
  – SCDCA
    • 1-800-922-1594
    • www.scconsumer.gov
      – “Complaint Services”
  – Documents
  – Process

• Common Complaints
  – Didn’t get what you paid for
    • Didn’t understand services
    • Said services not provided
  – Creditors are contacting me
  – Unlicensed Company
SCCCCA: Enforcement

• Enforcement
  – Consumer Refunds
    • Approx. $4,300,000 in refunds since 07/06
  – Lawsuits
    • Unlicensed companies (contracts & soliciting)
    • Licensed company in violation

• How does SCDCA know?
State & Federal Laws Working Together

• Fair Credit Reporting Act (FCRA) = Federal

• Financial Identity Fraud and Identity Theft Protection Act (FIFITPA) = State
Fair Credit Reporting Act

- **Right to Dispute**
  - *Consumer Can Dispute*:
    - Inaccurate, incomplete or untimely items
    - To credit reporting agency “CRA” and/or
    - Furnisher (Creditor)

  - **Requirements**:
    - CRA - Notify furnisher within 5 days
    - CRA & Furnisher - Investigate (unless frivolous)
    - CRA & Furnisher - Note File= in dispute
    - If no resolution in 30 days, CRA must remove info

- **Resolution**
  - Notify consumer within 5 days
  - 100 word dispute
FCRA cont…

• Reporting Periods
  – Bankruptcy
    • 10 years
  – Civil Lawsuit or Judgment
    • 7 years or statute of limitations (longer)
  – Paid Tax Lien
    • 7 years
  – Accounts Placed in Collection OR Charged Off
    • 7 years (clock begins 180 days after delinquency)
  – Other Adverse Info
    • 7 years
FCRA cont...

• **Right to Dispute - How?**
  – Get free credit report—www.annualcreditreport.com
  – Letters
    • **To Whom?**
      – To Credit Reporting Agency AND
      – Information Provider= Creditor

    • **What Should Be Included?**
      – what information is wrong
      – why it is wrong
      – ask that it should be removed
      – send copies of any papers you have that support your position.

*Make copies of the letter and supporting papers for yourself & send certified mail “return receipt requested”.*
Financial Identity Fraud and Identity Theft Protection Act (FIFITPA)

- **Credit Report Disputes**
  - Mirrors *Fair Credit Reporting Act*
  - When inaccurate info on credit report:
    - Write CRA
      - What is wrong in filed
      - Recommend certified mail
    - CRA must confirm or deny inaccuracy within 30 days.
FIFITPA cont...

• Credit Report Disputes cont...
  – If CRA DENIES inaccuracy MUST:
    • Give basis;
    • Send copy of file, including which creditors were contacts;
    • Give evidence that info is accurate

  – If CRA ADMITS inaccuracy MUST:
    • Contact creditors/requestors from the last six months
FIFITPA cont...

• Credit Report Disputes cont...
  – Private Cause of Action
  – Department of Consumer Affairs to Enforce
    • Complaints
      – 1-800-922-1594
      – www.scconsumer.gov “Complaint Services”
  • Pattern or Practice
Resources

• New SCDCA Debt Collection Brochure
  – www.scconsumer.gov
  – “Publications”; “Credit”; “Debt Collection”
Resources


• SCDCA-TV ~ YouTube
  – “Harassed by Debt Collectors?”

• SCDCA on Twitter & Facebook

• FTC “Repairing A Broken System”

• GAO Report on Credit Debt Collection
Carri Grube Lybarker
803-734-4297
Toll Free: 1-800-922-1594
Fax: 803-734-4229
www.scconsumer.gov