

Fair Credit Extension Uniformity Act

73 P.S. § 2270.1 et seq.

I. Overview

- A. FCEUA is Pennsylvania's analogue to the FDCPA and applies to both debt collectors and creditors. 73 P.S. § 2270.4.
- B. A debt collector's violation of any provision of the FDCPA constitutes a violation of the FCEUA, 73 P.S. § 2270.4(a), which constitutes a violation of the Consumer Protection Law.
- C. A creditor is liable under the FCEUA if it engages in any conduct declared unlawful by § 2270.4(b), which mirrors the FDCPA's proscriptions.

II. Definitions

- A. "Creditor": A person, including agents, servants or employees conducting business under the name of a creditor and within this Commonwealth, to whom a debt is owed or alleged to be owed. 73 P.S. § 2270.3
- B. "Debt." Obligation incurred for **personal, family or household purposes**.
 - 1. Does NOT include a purchase money mortgage on real estate, but DOES include refinancing mortgage.
 - 2. DOES include any amount owed as a tax to any political subdivision of this Commonwealth. Tax includes an assessment, any interest, penalty, fee or other amount permitted by law to be collected. DOES NOT include any such amount owed to the United States or the Commonwealth. 73 P.S. § 2270.3

III. Prohibitions on Creditors

A. "Unfair or Deceptive Acts or Practices":

- 1. Communications with a 3rd party to gain location information. 73 P.S. § 2270.4(b)(1)
 - a. must give identity, but cannot state name of creditor unless requested;
 - b. cannot state that the consumer owes a debt;
 - c. cannot contact more than once (except in very limited circumstances);
 - d. cannot send postcards or envelopes that show a debt is owed.
 - e. must communicate only with the attorney if s/he knows the debtor is represented
- 2. Communications with Debtor 73 P.S. § 2270.4(b)(2)

- a. only from 8am to 9pm
- b. no unusual times or places
- c. must communicate only with the attorney if s/he knows the debtor is represented
- d. cannot contact at place of employment if has reason to know employer prohibits it.
- e. No postcards or envelopes that show a debt is owed. 73 P.S. 2270.4(b)(6)

B. **“Harass, Oppress or Abuse”** 73 P.S. § 2270.4(b)(4). Examples:

3. Use or threat of use of violence or other criminal means to harm person, property or reputation
4. Use of obscene or profane language
5. Calling repeatedly or continuously
6. Calling without meaningful disclosure of identity

C. **“False, Deceptive or Misleading Representations or Means”** 73 P.S. § 2270.4(b)(5). Examples:

1. Implying “color of law” or government authority;
2. Misstating character, amount or legal status of debt;
3. Falsely implying that creditor is an attorney
4. **Representing or implying that nonpayment will result in arrest or imprisonment or the seizure, attachment or sale of any property unless such action is lawful and the creditor intends to take such action.**
5. Threatening to take any action that creditor does not intend to take or is illegal
6. Representing that transfer of debt to a legal department, attorney or collection agency will cause debtor to lose rights or defenses.
7. Alleging that the consumer committed a crime or fraud against the creditor.
8. Threatening to report false information to a credit bureau, including failing to report that a debt is disputed.
9. Falsely representing that documents are or are not legal process.

D. **“Unfair or unconscionable means”** 73 P.S. § 2270.4(b)(6). Examples:

1. Collecting any amount that is not authorized by creditor’s agreement with debtor.
2. Soliciting postdated checks that do not meet the requirements of FCEUA
3. Charges for collect phone calls if purpose of call is concealed.
4. Threatening to take property without authority.

IV. Enforcement

A. Federal Court can have jurisdiction if a federal claim is also filed. Dougherty v. Wells Fargo Home Loans, Inc., 425 F. Supp. 2d 599 (E.D. Pa. 2006)

B. Statute of Limitations: 2 years 73 P.S. § 2270.5(b)

- C. Violation of FCEUA is a violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law at 73 P.S. § 201-9.2, which provides:
1. Actual damages OR \$100 for each violation, whichever is greater.
 2. Court has discretion to award treble damages
 3. Costs
 4. **Reasonable attorney's fees**
- D. Defense: 73 P.S. § 2270.5(d)
- “A debt collector or creditor may not be held liable in any action for a violation of this act if the debt collector or creditor shows by a preponderance of the evidence that the violation was both not intentional and:
- (1) resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error; OR
 - (2) resulted from good faith reliance upon incorrect information offered by any person other than an agent, servant or employee of the debt collector or creditor.”

V. Caselaw

- Threatening or bringing suit on time-barred debt violates the FCEUA and UTPCPL. Comm. V. Cole, 709 A.2d 994 (Pa.Cmwlth. 1998); Richburg v. Palisades Collection LLC, 247 F.R.D. 457 (E.D. Pa. 2008).
- Giving a faulty TILA disclosure in a mortgage refinancing violates FCEUA if it misrepresents the nature and status of the debt owed. Jefferies v. Ameriquest Mortg. Co., 543 F. Supp. 2d 368, 388 (E.D. Pa. 2008).