

Analysis of a sample consumer letter to a debt collector (collection agency) telling it to cease communication as authorized by the Fair Debt Collection Practices Act (FDCPA).

Click the number on the left to link to an explanation of this part of the letter.

1

SENT USPS CERTIFIED MAIL

2

March 1, 2019

3

[Company Name]
[Address]
[City, State Zip]

4

Re: [Debt collector account number or credit card information]

5

Dear Sir or Madam:

6

I received a debt collection letter or notice or a phone call from you regarding the above alleged debt. I do not wish to receive any further communication from you regarding this alleged debt.

7

Any further communication regarding this alleged debt, including but not limited to written correspondence, facsimiles, emails, texts and phone calls, will be a violation of the Fair Debt Collection Practices Act, 15 U.S.C. 1692c(c), and will be treated accordingly.

8

I do not owe this debt.

9

Please be advised my only income is Social Security benefits and pension which are not subject to garnishment or attachment. My bank account only contains deposits from my income sources and therefore is also exempt from garnishment and attachment.

10

I do not own any assets such as investments, a house or a car.

11

Upon receipt of this letter, your immediate compliance is mandatory.

Sincerely,

[Sign your name here]

[Your Name]

[Your Address]

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- 1) The federal Fair Debt Collection Practices Act (FDCPA) requires collection agencies to stop communicating with consumers after receiving a written request asking the collector to cease collection contacts or stating the debt is not owed.

The best way to prove that the collection agency received your written request, is to mail your letter by USPS Certified Mail® with Return Receipt requested. The cost to send a USPS Certified Mail® letter with Return Receipt (Green Card) is \$6.80 (2019). The collection agency must sign the Green Card when they receive your letter. The Green Card is then returned to you by mail. It is slightly cheaper (you save \$1.35) to receive an Electronic Receipt that is emailed to you rather than a Green Card that is mailed to you.

An alternative is to mail your letter USPS Certified Mail® letter without Return Receipt at a cost of \$3.35 plus regular postage. You still have proof that your letter was delivered. The tracking number will produce a delivery confirmation, a signature will be collected, and the signature will be accessible to you for an additional fee.

When you enter the tracking number associated with a mailpiece into the USPS Tracking page gives you the current status of an item along with other tracking information. That information includes, if available, delivery and/or attempted delivery information, including date and time of delivery as well as the delivery location of the item (mailbox, reception desk, neighbor, etc.).

See [USPS-Tracking-The-Basics](#) for more information.

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- 2) This is the date you mailed the letter.

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- 3) This is the name and address of the debt collection company that mailed you a collection notice or called you about the debt. It may be difficult to obtain this information from the debt collector on a phone call. But if they want you to make a payment on the debt, they must give you an address to mail the payment. Perhaps simply asking “Where do I mail my payment?” will get you the information you need to mail the cease communication letter rather than a payment.

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- 4) This information should be on the collection notice you received in the mail. For a collection phone call, ask for the collection account number so your payment will be credited to the right account. If the debt is owed on a credit card, write the credit card number and the name of the bank that issued the credit card at this place on the letter. If you have been sued on the debt, list the name of the court and the case number. Otherwise, just write any information you have regarding the debt. The purpose is to identify the specific debt as much as possible.

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- 5) This is the greeting, also called the salutation. Since you do not know the person who will open your letter, this formal greeting is used.

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- 6) This paragraph simply states the purpose of the letter – that you received a communication about an alleged debt and that you do not want to receive any further communication about it.

Note the we use the phrase “alleged debt”. We use that phrase to avoid having you admit that you owe this debt. The fact is you may owe it or you may not or you may not owe as much as they claim. But until the collection company proves that you owe a certain amount, this debt is unproven and therefore unknown to you whether you owe it or not.

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- 7) This paragraph lets the collection company know that you know what your rights are regarding debt collection communication. You are telling them that you have the right to stop all communication and if they continue to communicate, they will

be violating the law.

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- 8) This statement, “I do not owe this debt”, clearly and without doubt states your position regarding this debt. This puts the burden on the collection company to prove that you do in fact owe this specific amount of debt. You may not owe this debt for a number of reasons, such as the amount is wrong, another person with your same name owes this debt, you already paid this debt or the collection company waited too long to sue you for the debt and you have a statute of limitations defense to the debt.

The most comprehensive data available about the age of debts being collected by debt buyers comes from a 2013 FTC study of the debt-buying practices of some of the nation’s largest debt buyers. See, Fed. Trade Comm’n, [The Structure and Practices of the Debt Buying Industry](#) (Jan 2013). This study found that nearly 25% of debt acquired from the original creditor, and more than 60% of debt purchased from other debt buyers was over 3 years old at the time of purchase. More than 30% of the debt purchased from other debt buyers was over 6 years old. Thus, a substantial portion of debts being collected by debt collectors are likely to be beyond the statute of limitations.

But if you admit that you owe this debt, the collection company no longer needs to prove that you owe it and you may have waived any defenses including the statute of limitations. So, it is very important to put this simple six-word sentence in your letter.

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- 9) Telling the collection company the source of your income, may be helpful if the income is not subject to garnishment or attachment. In other words, even if the collection company takes you to court and proves you owe the debt, the collection company cannot take a portion of your income to pay for the debt because that is prohibited by federal or state law. Social Security benefits and pensions governed by ERISA (the federal Employee Retirement Income Security Act of 1974) are two sources of income that are federally protected.

Maybe the collection company won’t spend the time, effort and cost to sue you for the debt if it knows that your income is protected by law.

See [Ohio Revised Code § 2329.66](#), Exempted interests and rights, section (A)(17) which states funds expressly listed under “property exempt from execution, garnishment, attachment, or sale” includes “any other property that is

specifically exempted from execution, attachment, garnishment, or sale by federal statutes. . . “.

See also [Ohio Revised Code 2716.13](#), which states in part:

The law of Ohio and the United States provides that certain benefit payments cannot be taken from you to pay a debt. Typical among the benefits that cannot be attached or executed upon by a creditor are the following:

- (1) Workers' compensation benefits;
- (2) Unemployment compensation payments;
- (3) Cash assistance payments under the Ohio works first program;
- (4) Benefits and services under the prevention, retention, and contingency program;
- (5) Disability financial assistance administered by the Ohio department of job and family services;
- (6) Social security benefits;
- (7) Supplemental security income (S.S.I.);
- (8) Veteran's benefits;
- (9) Black lung benefits;
- (10) Certain pensions.

There may be other benefits not included in the above list that apply in your case.

Because the Ohio Supreme Court has held that “statutorily exempt funds do not lose their exempt status by voluntary deposit into a checking account, as long as the source of the exempt funds is known or is reasonably traceable,” ([Daugherty v. Cent. Trust Co. of Ne. Ohio](#), N.A., 28 Ohio St.3d 441, 504 N.E.2d 1100 (1986)), it is important to note that your checking and savings accounts contain only deposits from income sources that are exempt from garnishment and attachment.

When this is true, then the money deposited into your checking and saving accounts retain their exempt status and cannot be taken by the collection company to satisfy its judgment against you.

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10) Telling the collection company that you have no investment accounts, no house and no car means that you have no assets the collection company can take to collect the debt even after they take you to court and obtain a judgment, i.e. a court order that legally you owe the debt. This may cause the collection company to focus its efforts on other consumers with more assets and a greater ability to pay the debt.

Money deposited in investment accounts, such as money market accounts and certificates of deposit, unlike checking and savings accounts, do not retain the exempt status of the original income source and are therefore subject to garnishment and attachment by the collection company.

If you do own investment accounts, a house or car or other assets, see [Ohio Revised Code § 2329.66](#), which lists property exempt from execution, garnishment, attachment, or sale. For example, [RC § 2329.66\(A\)\(1\)\(b\)](#) exempts \$145,425 of a person's personal residence.

For the latest statutory exemption amounts adjusted for inflation, see the [Ohio Judicial Conference Adjustments for Inflation Table](#). The Ohio Judicial Conference is tasked with the job of adjusting [RC § 2329.66](#) exempt amounts relative to inflation every three years on April 1st. See [RC § 2329.66\(B\)](#). The latest [table](#) lists exempt amounts applicable to satisfaction of judgments and orders from April 1, 2019 through March 31, 2022.

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11) The Fair Debt Collection Practices Act (FDCPA), [15 U.S.C. 1692c\(c\)](#), except for three limited exceptions, requires "debt collectors" to stop dunning consumers after receiving a written request asking the collector to stop collection contacts.

The FDCPA also requires that the debt being collected be a consumer debt, that the debtor be a consumer and that the debt collector be subject to the FDCPA. The FDCPA generally applies to:

- Collection agencies;
- Collection attorneys, some eviction attorneys and most foreclosure attorneys;
- Creditors using a false name;
- Creditors collecting for another person;
- Repossession and foreclosure companies;

- Most purchasers of debt after default;
- Credit counselors for profit; and
- Check collection services.

The FDCPA generally excludes creditors collecting debts that they originated and assignees, debt buyers, that obtained the debt before default. This means that if you send the above letter to Chase Bank, because Chase is calling you to attempt to collect an overdue credit card bill, Chase is not required by the FDCPA to stop contacting you because Chase is the original creditor and issuer of the credit card. But if Chase hires a collection agency to collect its credit card debt, then the collection agency is required by the FDCPA to stop contacting you after it receives your letter, because it is a debt collector as defined by the FDCPA.

However, even though a creditor collecting its own debts is generally excluded from the FDCPA, if the principal purpose of its business is the collection of debts, then it is covered by the FDCPA.

For example, in [Henson v. Santander Consumer USA Inc.](#), 137 S. Ct. 1718 (2017), the Supreme Court held that Santander was not a debt collector under the Fair Debt Collection Practices Act's (FDCPA's) second definition of debt collector under [15 U.S.C. § 1692a\(6\)](#). This narrow opinion held that a debt buyer is not subject to the FDCPA as an entity regularly collecting debts owed or due another, leaving intact the alternative approach of showing that a debt buyer qualifies as a debt collector under the FDCPA because the principal purpose of its business is the collection of debts.

In [Barbato v. Greystone Alliance, L.L.C.](#), 2019 WL 847920 (3d Cir. Feb. 22, 2019), the Third Circuit held that the debt buyer, Crown Asset Management (Crown), is a debt collector under the "principal purpose" prong, holding that "an entity that otherwise meets the 'principal purpose' definition cannot avoid the dictates of the FDCPA merely by hiring a third party to do its collecting." See, [Key Post-Henson Decision Holds Debt Buyer Is a "Principal Purpose" Debt Collector](#), published by NCLC Digital Library, (March 7, 2019)

The bottom-line is that it does no harm to mail the above letter to any company contacting you about a debt. If the FDCPA does not apply to the company, then it may ignore your letter and continue contacting you. If your letter does not stop the debt collection harassment, then you should contact an attorney or your nearest legal aid office by calling 1-866-LAW-OHIO (1-866-529-6446).

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- 12) The federal Fair Debt Collection Practices Act (FDCPA) requires collection agencies to stop communicating with consumers after receiving a written request asking the collector to cease collection contacts or stating the debt is not owed.

This part of the letter is simply your signature above your typed name and address so the collection agency knows who sent the letter and can identify you in their system in order to cease collection contacts.

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