

TOPIC 17: CONSUMER PROTECTION

Overview

Consumer protection law concerns the body of statutes and regulations protecting consumers against deceptive practices by merchants or service providers. This chapter introduces the concept of consumer protection and its purpose. It then introduces the numerous federal statutes that protect consumers in specific situations. While these are the primary federal consumer protection laws, states often pass consumer protection laws that are more specific and more stringent than the federal protections.

VIDEO LESSON - INTRODUCTION



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TOPIC 17: CONSUMER PROTECTION - QUESTIONS & ANSWERS

1. What is “consumer protection law”?

Consumer protection laws are state and federal laws that serve to protect individual consumers from deception or fraud in the marketplace. A consumer is someone who buys something for personal, family, or household use. These laws promote the accurate disclosure of information, facilitate market competition, and deter fraudulent practices. These laws specifically identify practices that are unfair or deceptive and mandate certain practices with regard to consumer disclosure. They protect vulnerable members of society and provide consumers with greater confidence in entering into commercial transactions.

- **Discussion:** How do you feel about laws developed specifically to protect consumers from unfair or deceptive practices by merchants? Do you think that the situation of the consumer in the market justifies the special protections? Why or why not?
- **Practice Question:** Damien has a small business. He purchases equipment for the business and believes that he has been defrauded by the seller. Does the consumer protection laws protect him? Why or why not?
- **Resource Video:** <http://thebusinessprofessor.com/consumer-protection-law/>

2. What major federal laws protect consumers?

Consumer protection laws exist at both the federal, state, and local levels. Also, there are numerous private organizations that seek to promote fairness in consumer and commercial transactions. The following are the major federal consumer protection laws.

- *Federal Trade Commission Act*
- *Equal Credit Opportunity Act*
- *Fair Credit Reporting Act*
- *Truth in Lending Act*
- *Fair Debt Collection Practices Act*
- *Consumer Financial Protection Act*
- *Fair Credit Billing Act*
- *Electronic Funds Transfer Act*
- *Consumer Product Safety Act*

- *Manguson-Moss Warranty Act*
- *Federal Food, Drug, and Cosmetic Act*
- *Various Labeling Laws*
- *Privacy Act of 1974*
- *Electronic Communication Privacy Act*
- *Children's Online Privacy Protection Act*

REGULATORY AGENCIES

Individuals affected by a merchant's conduct may bring a civil action against the merchant. Further, numerous regulations exist that allow injured consumers to report violations of consumer protection laws. In an effort to stop or punish violations of the law, the government may then pursue administrative, civil, or criminal actions against the merchant. In this section, we discuss the administrative agencies charged with a consumer protection mission and the procedures used to carry out that mission.

3. What is the "Federal Trade Commission"?

The Federal Trade Commission (FTC) is the primary federal agency with the mission of protecting consumers. Authorized under the Fair Trade Commission Act, the FTC is an "independent" regulatory agency charged with keeping competition free and fair and with protecting consumers. The President appoints commissioners to the FTC and Congress approves the agency budget. A special bureau called the Bureau of Consumer Protection (BCP) promotes the consumer protection mission of the FTC. It promotes competition under the antitrust laws as well as protects consumers through the FTC Act's prohibition on "unfair or deceptive acts or practices in commerce." In summary, the overall objective of the FTC is to ensure fair competition by preventing those who deceive consumers from diverting sales or trade from those who compete honestly.

- *Example:* The FTC regulates commercial practices, such as advertising and marketing, sales of financial products and practices, privacy and identity protection, etc.
- **Discussion:** How do you feel about the functions and objectives of the FTC? Do you think it should be the role of a special administrative agency to promote consumer interests in the commercial market? Why or why not?
- **Practice Question:** What is the role and purpose of the Federal Trade Commission with regard to consumer protection laws?
- **Resource Video:** <http://thebusinessprofessor.com/federal-trade-commission/>

4. What are the enforcement procedures of the FTC?

Within the FTC, attorneys working in the bureau of consumer protection enforce the federal laws related to consumer affairs and rules promulgated by the FTC. The FTC enforces these rules and laws through the following methods:

- *Advisory Opinions & Industry Guides* - If a business is uncertain as to the legality of a particular course of conduct, it can request an advisory opinion from the FTC. Upon request, the FTC will advise businesses as to whether a proposed practice is unfair or deceptive. These advisory opinions are not legally binding, but they provide guidance as to how the FTC would view the legality of a certain practice.
 - *Note:* The FTC also publishes industry guides, which specify the agency's view as to legality of a particular industry trade practices.
- *Investigation* - The BCP is the internal group charged with handling the investigation and potential prosecution of FTC violations. The FTC generally initiates investigations pursuant to reports from consumers and businesses, pre-merger notification filings, congressional inquiries, or reports in the media.
- *Consent Orders* - The FTC may enter into agreements with alleged violators to refrain from the continued violation of consumer protection law, known as "consent orders". This is where the alleged violating party consents to an administrative order to modify or correct the challenged practices.
 - *Note:* While voluntary compliance through a consent order is often effective, the FTC has the option to skip the consent order process and file an administrative complaint or initiate federal litigation.
- *Administrative Complaint* - The FTC will bring an action before an administration court. The court may order that the business cease the practice in question. If the findings of the administrative judge are challenged, the case is reviewed *de novo* by the full FTC Commission. If the defendant wishes to appeal the decision of the FTC commission, she can initiate a challenge with the US Court of Appeals.
 - *Note:* The primary remedy for violation of the FTC Act is an administrative cease and desist order.
- *Civil Actions* - The FTC may initial civil actions for violation of administrative statutes or regulations.
- *Criminal Charges* - The FTC is charged with authority to prosecute businesses for committing unfair or deceptive trade practices. Often, however, the FTC supports the prosecution efforts of the US Department of Justice. Criminal charges against a business generally allege violation of Section 5 of the FTC Acts by:
 - committing "unfair or deceptive acts or practices", or
 - violating "trade regulation rule".

None of the above-mentioned methods are exclusive.

- **Discussion:** How do you feel about the FTC enforcement procedure? Does it concern you that adjudication of alleged violations of consumer protection provisions are administrative? Why or why not?
- **Practice Question:** Can you describe the process that the FTC follows in enforcing administrative protection laws against an alleged violator?

- **Resource Video:** <http://thebusinessprofessor.com/ftc-regulatory-enforcement-procedures/>

5. What administrative penalties and remedies may the FTC seek for violation of FTC regulations?

The FTC, through the negotiation of consent orders, has broad powers to fashion appropriate remedies to protect consumers in trade regulation cases, including:

- rescission of contracts (each party must return what has been obtained from the other);
- refund of money or return of property;
- payment of damages to consumers, and
- public notification of trade practice violations.

In an administrative action by the FTC, the administrative court may issue civil fines. The fines must be enforced by filing a subsequent action in the Federal District Court. The basic penalty for trade practice violation under the FTC Act is a civil fine of not more than \$16,000 per violation. Fines may be assessed in three distinct situations:

- for violation of a consent or cease and desist order,
- for a violation of trade regulation rule, and
- for a knowing violation of prior FTC orders against others.

Each separate violation of an order or rule shall be a separate offense.

- **Discussion:** How do you feel about the authority of the administrative court to administer remedies for violations of consumer protection laws? Does it affect your opinion that the fines or other remedies must be enforced through a civil court action? Why or why not?
- **Practice Question:** What is the role of the Federal Trade Commission and what is the extent of its authority and jurisdiction?
- **Resource Video:** <http://thebusinessprofessor.com/ftc-remedies-for-consumer-protection-violations/>

6. What type of commercial practices does the FTC prohibit in an effort to protect customers?

The FTC prohibits commercial practices that are deceptive to customers. This generally concerns the practices of merchants who market or otherwise represent the quality or characteristics of goods or services to customers. In determining what is “deceptive”, the FTC will look at various characteristics about the information disclosed to the public.

- How would a “reasonable consumer” understand the information in the context of the message?

- Are there any express and implied claims about the product or service?
- Would leaving out information from the advertisement give consumers a misimpression?
- Is the claim of deception “material”?

If the representations to customers are deemed to be deceptive, the customer or FTC may bring a civil action against the violator.

- **Discussion:** How do you feel about the reasonable consumer standard in determining whether a practice is deceptive? At what point should an opinion or general information about a product be considered an express or implied representation of the product’s qualities? How do you feel about the uncertain standard as to what type of practice constitutes a material deception?
- **Practice Question:** Mark produces an advertisement for his business ABC, LLC. The advertisement makes claims about the quality and durability of ABC products. ABC receives many complaints that the products they sell routinely break, malfunction, and generally do not meet the standards advertised. If a group of customers ban together and file a complaint with the FTC against ABC for deceptive practices, what standard will the FTC apply in determining whether ABC should be held liable?
- **Resource Video:** <http://thebusinessprofessor.com/commercial-practices-prohibited-by-ftc/>

7. What is the “Consumer Financial Protection Act”?

Overview

The Consumer Financial Protection Act was passed in 2010 as part of the Dodd-Frank Act with the purpose of establishing the Consumer Financial Protection Bureau (CFPB). The CFPB and FTC overlap in authority to administer consumer laws. The CFPB has broad authority to regulate federal financial consumer laws including offer and sale of consumer financial products. It seeks to promote market transparency and competitiveness by making certain that consumer financial protection regulations are applied consistently. It has rulemaking and enforcement authority. The CFPB is divided into four offices:

- *Office of Fair Lending and Equal Opportunity* - This office is charged with oversight and enforcement of federal laws intended to ensure access to credit;
- *Office of Financial Education* - This office is charged with educating consumers on financial decisions;
- *Office of Service Member Affairs* - This office is charged with developing and implementing initiatives for military service members and their families; and
- *Office of Financial Protection for Older Americans* - This office is charged with facilitating the financial literacy of individuals 62 years old and older.

Authority & Procedure

The CFPB has exclusive administrative rulemaking authority for most matters affecting consumer protection. The bureau also conducts investigations into allegations of consumer fraud. Based upon the results of investigation, it may bring administrative or civil actions against covered persons for violating consumer protection laws. A “covered person” is any person or business offering or providing consumer financial products or services. Certain entities are exempt from CFPB authority, including: insurance companies, Internet service providers, real estate agents, lawyers, car dealers, and persons regulated by the SEC. The CFPB has exclusive authority to enforce consumer protection laws against non-depository institutions and insured depository institutions with \$10 billion or more in assets.

- *Note:* The CFPB works closely with an authorized consumer advisory board to advise and consult with the CFPB in the exercise of its functions.

State Regulatory Authority

Pursuant to Title X of the CFPA, states may also regulate consumer protection, as long as state regulation does not conflict with federal laws. States may also bring actions to enforce federal consumer protection laws. Title X allows the application of state law to national banks. Federal law does preempt a state’s ability to enforce consumer protection law against national banks and other federal financial institutions if:

- the application of the state law would have a discriminatory effect on the national bank or thrift;
- the state law prevents or significantly interferes with the exercise of the national bank or thrift’s powers; or
- the state consumer law is preempted by another federal law.

- **Discussion:** Why do you think Congress specifically authorized an administrative body to protect consumers in transactions with financial organizations? Do you think this regulatory framework is effective? Why or why not? Why do you think the federal law allows for dual regulation (federal and state) of financial institutions?
- **Practice Question:** What is the role of the Consumer Financial Protection Bureau and what is the extent of its authority and jurisdiction?
- **Resource Video:** <http://thebusinessprofessor.com/consumer-financial-protection-act/>

REGULATION OF CREDIT AND LENDING PRACTICES

This section includes a brief discussion of the various consumer protection statutes relating to the extension of credit.

8. What is the “Equal Credit Opportunity Act”?

The Equal Credit Opportunity Act (ECOA) protects individuals from discrimination in lending money or the extension of credit. It covers financial institutions, retail establishments, credit-card issuers, and other credit-granting firms. The ECOA extended the protections from discrimination under Title VII beyond the work environment. It prohibits a lender from discriminating in the extension of credit based upon race, color, religion, national origin, sex, marital status, or age. The

ECOA went further to protect against discrimination based upon receipt of public assistance (welfare). Examples of discrimination might include:

- refusing to extend credit;
- discouraging someone from pursuing credit based on a protected characteristics;
- charging a higher rate of interest;
- asking about marital status for a single-borrower loan; and
- asking about children or plans to have children.

Business Compliance

The Act imposes special responsibilities on businesses extending credit, as follows:

- issuers must calculate income from all regular sources, such as alimony, maintenance, and part-time jobs;
- issuers must use the credit history for all partners;
- issuers must inform the candidate about the credit decision (granted or denied) within 30 days; and
- consumers must be given a specific reason for denial of credit.

The business must notify the applicant of the reason for a denial of a request to extend credit. Further, the protections extend to any negative action taken pursuant to extending credit.

- *Example:* A business must notify customers of the reason for a denial of credit, closures of a line of credit, changes to terms of the credit relationship (that is not uniform to all creditors), etc.

Remedies for Violation

The ECOA provides several remedies and penalties for violation of the Act, as follows:

- *Private Administrative or Civil Actions* - Individuals may bring private causes of action or pursue enforcement through the FTC or CFPB.
- *Remedies* - Individuals bringing a private cause of action may recover actual damages, punitive damages (up to \$10,000), attorneys fees, and legal costs.
- *FTC Administrative and Civil Actions* - The FTC may also bring an administrative or civil action against the issuer seeking equitable remedies, including injunction against further violations.

- ***Discussion:*** How do you feel about the broad anti-discrimination provisions of ECOA? How do you feel about the requirements on businesses that extend credit to customers? Are these too broad or too narrow? Why? Why do

you think the ECOA allows for private causes of action and FTC actions for violations?

- **Practice Question:** Sara is the owner of a small lending firm that makes personal loans. Before lending any money, she collects extensive personal and financial information about the prospective borrower. She uses this information to determine whether to extend credit and at what rate. She focuses on the requirement that any borrower have regular income and a proven ability to repay the funds. What limits are placed on Sara as to the type of information she can record and use in the determination of whether to extend credit?
- **Resource Video:** <http://thebusinessprofessor.com/equal-credit-opportunity-act/>

9. What is the “Fair Credit Reporting Act”?

Overview

The Fair Credit Reporting Act protects consumers (not businesses) by regulating the accuracy, fairness, and privacy of consumer information reported to or held by consumer reporting agencies. It protects consumers from the negative consequences associated with inaccurate information in their personal credit reports. The FCRA regulates each stage of the credit reporting process, including collection of information, reporting of that information to credit agencies, dissemination of credit information, and use of a consumer’s credit information (such as in extending new credit). The Act applies to anyone who prepares or uses a credit report in connection with extending credit, selling insurance, or hiring or firing an employee.

- **Note:** The FCRA was amended in 2003 (by the *Fair and Accurate Credit Transaction Act*) to allow consumers to receive one copy of their credit reports each year from each credit reporting agency. It also established rules for credit reporting agencies and businesses to increase identity theft protections. These provisions include placing fraud alerts on credit reports, truncation of debit and credit card numbers, secure disposal of consumer information, etc.
- **Example:** You walk into my store and ask to finance the purchase of a large piece of machinery that I sell. I may request authorization to request your credit report. My request and use of this credit report in my decision of whether to extend you credit will be governed by the FCRA.

- **Resource Video:** <http://thebusinessprofessor.com/fair-credit-reporting-act/>

Requirements on Users of Credit Reports

A “credit report” is a collection of a consumer’s credit history. It includes such information as: past payment history, current credit accountings, late payments, credit limits, any debt or bill collection activity, liens, judgments, bankruptcies, etc. A “user” of a credit report is anyone who employs a report in the decision of whether to extend any form of credit. Extending credit may include financing a sale, establishing a recurring account, hiring, or loaning money. The FCRA places the following requirements on businesses that use credit reports to make decisions affecting the consumer:

- **Notice of Rejection** - The FCRA allows a user of a credit report to request the report for a permissible reason. It requires that businesses inform consumers who seek credit for personal, family, or household purposes if their

request is denied because of an adverse credit report. The notice must include the source of the credit report and notification of the right to make a request within 60 days to the reporting agency regarding the nature of the information received.

- *Note:* The purpose of this provision is to allow the individual to receive the report and challenge its accuracy.
- *Investigative Consumer Reports* - “Investigative consumer reports” are investigations carried out through personal interviews in the consumer’s community to uncover personal details, such as her character, lifestyle, community reputation, etc. A business seeking to acquire such information may only seek such a report after giving 3-days notice to the consumer. The consumer may request information on the scope and nature of the investigation.
 - *Note:* The purpose of this provision is to protect consumers from the negative consequences of personal inquiries.
- *Employer Background Checks* - Employers using consumer reports to screen job applicants or perspective employees must follow specific procedures, including:
 - obtaining written permission;
 - explaining how the credit report will be used;
 - avoiding any inappropriate or non-disclosed uses of the report;
 - providing a copy of the credit report (if the employee is not hired); and
 - allowing the applicant to dispute any information contained in the report before making a final decision.

The above-referenced list of common users of a credit report is not exhaustive. There may be any number of situations in which an individual uses a credit report in decisions affecting an individual.

- *Note:* A major limitation is that the FCRA does not limit the use or consideration of prior history or experiences between the consumer and the user of the credit report. Also, the bank falls under an exception if it gives its opinion of the credit worthiness of the consumer within the report.

- **Resource Video:** <http://thebusinessprofessor.com/fair-credit-reporting-act-users-of-information/>

Consumer Reporting Agencies

A credit reporting agency is any business that collects information about consumers for the purpose of disseminating that information in connection with credit applications, employment, or other evaluations of the individual’s credit. The largest personal credit reporting agencies in the United States are Transunion, Experian, and Equifax. The FCRA requires that credit reporting agencies follow the following guidelines:

- *Procedures* - Put in place procedures to ensure the accuracy of information in a consumer report;
 - *Note:* If it does so, it may not be liable to consumers under state or federal law if it reports false information.
 - *Verify Information* - Provide a consumer with notice of the information collected and seek to verify any disputed information;
 - *Dispute Negative Information* - Provide a manner for disputing negative information on a credit report.
 - *Notification of Negative Information* - If negative information is removed from the reporting agency's file, give a consumer 5 days notice before reinserting that information;
 - *Removal of Negative Information* - The reporting agency must remove any negative information from the report within seven years of the date of the reported delinquency;
 - *Note:* The time period is extended for bankruptcy filings (10 years) and tax liens (7 years from when paid).
- **Resource Video:** <http://thebusinessprofessor.com/fair-credit-reporting-act-reporting-agencies/>

Furnishers of Credit Information

The FCRA places obligations upon creditors who furnish a consumer's credit information to a reporting agency. This may include lenders, retailers, collection agencies, etc., that deal with customer credit and report that information to a reporting agency. The FCRA requires that these creditors:

- provide complete and accurate information to the credit reporting agencies;
- investigate consumer disputes received from credit reporting agencies;
- correct, delete, or verify information within 30 days of receipt of a dispute; and
- inform consumers within one month about negative information that is in the process of or has already been placed on a consumer's credit report.
 - *Note:* This normally includes providing notice before and after negative information is reported.

- **Resource Video:** <http://thebusinessprofessor.com/fair-credit-reporting-act-furnishers-of-information/>

Enforcement

The FTC and CFBP enforce the provisions of the FCRA. Further, individuals may bring a cause of action against creditor

reporting agencies or credit providers. In a civil action, a creditor may recover actual damages, attorney's fees, court costs, and punitive damages (if the conduct is intentional).

- *Note:* A consumer must file a civil action within two years of when the violation is discovered or within five years of when the violation occurred.

- **Discussion:** How do you feel about the regulation of all individuals involved in the use of a credit report? Do you find any of the obligations too relaxed or overly stringent? Why?

- **Practice Question:** Eric has a small business selling farm equipment. He routinely finances pieces of equipment for his customers. In this process, he pulls customer credit reports and also contacts other suppliers in the community to learn more about the customer's credit worthiness. He is in need of help in his business, so he is looking for someone to handle the equipment financing. When posting the position publicly, he requires applicants submit to a credit report. What procedures must Eric undertake to comply with the requirements of the FCRA?

10. What is the “Truth in Lending Act”?

Overview

The Truth in Lending Act (TILA) was passed with the purpose of protecting individuals from entering into deceptive or confusing credit relationships. The group of regulations implementing the provisions of TILA is known as “Regulation Z”. These regulations contain the bulk of the requirements for businesses to comply with TILA. The CFPB, along with the Federal Reserve Board, has rule-making authority under Regulation Z. The FTC has enforcement authority for TILA.

Applicability

TILA places requirements on businesses that extend credit to consumers to make certain disclosures regarding the terms of the credit. Most notably, it requires a uniform manner of disclosure of the borrowing costs and payment associated with a particular loan. This allows consumers to more readily compare credit terms across lenders. TILA applies to consumer transactions with the following characteristics:

- the lender is in the business of extending credit for loan of money, sale of property, or furnishing a service;
- the debtor is a person;
- a finance charge may be imposed; and
- the credit obtained is primarily for personal, family, household, or agricultural purposes.

Other provisions of TILA protect consumers entering into consumer transactions requiring them to post their personal residence as collateral.

- *Note:* TILA applies specifically to loans made for consumer purposes. Business loans, even for closely-held businesses, are not included.

Disclosure Requirements

Disclosures are required when the buyer pays in four installments or more. TILA requires the following specific disclosures:

- *Finance Charge* - The sum of all charges payable directly or indirectly by the debtor or someone else to the creditor as a condition of the extension of credit.
 - *Example:* Finance charges include: interest, service charges, loan fees, points, finder's fees, fees for appraisals, credit reports or investigations, and life and health insurance required as a condition of the loan.
- *Annual Percentage Rate* - The lender must disclose the finance charge, express it as an annual percentage rate, and specify the methods for making the computation.
 - *Note:* TILA introduced the Annual Percentage Rate (APR) calculation mandated for all consumer lenders.
- *Financing Statement* - Before extending credit, the lender must provide a detailed financial statement to the borrower before extending credit.
 - *Note:* The financing statement must contain the APR, finance charges, any default or delinquency charges from late payment, description of property used as security, the total amount financed, and a separate statement of the debt from finance charges.

Enforcement

TILA allows for various penalties and remedies. Civil remedies for violation of TILA include an amount twice the amount of finance charges, plus attorney's fees. Creditors may avoid liability for an error if they notify and correct the error within 60 days of discovery. The borrower may generally rescind the transaction within 3 days of the transaction or upon receipt of notice of right to rescind. The right to rescind is heightened if there is a failure to adequately disclose on a mortgage loan.

- ***Discussion:*** What do you think about the underlying objectives of TILA? Do you think the extensive disclosure requirements achieve these objectives? Why or why not? Do you think that the applicability of the provisions are adequate? Why or why not?
- ***Practice Question:*** Cary owns a small business that sells consumer goods. She routinely extends credit to individuals purchasing her goods. Cary charges a financing charge and interest rate that is based upon the customer's credit score. What disclosures must Cary make to her customers prior to entering into a financing arrangement?
- ***Resource Video:*** <http://thebusinessprofessor.com/truth-in-lending-act/>

DEBT LIABILITY PROTECTION

This section includes a brief discussion of the various consumer protection statutes relating to consumer liability for certain debts.

11. What is the “Fair Debt Collection Practices Act”?

Overview

The Fair Debt Collection Practices Act (FDCPA) was passed to protect consumers from abusive practices by debt collectors. It establishes limitations on debt collection practices, provides a method for disputing uncertain debts, and prescribes remedies for violation of the Act. The FDCPA applies only to consumer debts collected by debt collectors — business debts are not covered. A “consumer debt” is a debt established for personal, family, or household purposes. A debt collector is defined as “any person who uses any instrumentality of interstate commerce or the mail in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” In other words, the FDCPA applies to businesses whose primary business is the collection of third-party, consumer debt.

- *Note:* The Act does not apply to individuals or business collecting their own debts.
- *Example:* Examples of debt collectors include debt collection agencies and attorneys.

Information from Debt Collector

A debt collector must provide the debtor with the following information:

- *Identification* - Any communication from to the debtor must identify the collector and provide notice that any information obtained will be used for the purpose of collecting a debt.
- *Amount* - The communication must contain the amount of the debt.
 - *Note:* The debt must represent the original debt and be in accordance with applicable law regarding interest and fees.
- *Creditor Information* - The communication must contain the name of the creditor to whom debt is owned.
 - *Note:* This includes the name of the collection agency and the owner of the original debt.
- *Notice of Dispute* - Within 5 days of making initial contact, the collector must provide notice that the debtor has 30 days to dispute the validity of the debt.
 - *Note:* Failure to dispute the validity of the debt allows the collector to presume that it is valid.
- *Verification of Debt* - If a debtor disputes the validity of the debt, the collector must provide information verifying that the debt is valid and, if requested, the name of the original creditor. If the original debt was reported to a credit reporting agencies for inclusion on the debtor’s credit profile, notice of any dispute must also be reported to

the credit reporting agencies.

- *Note:* Requiring a debt collector to validate the debt may be difficult when the collector is a third-party agency that purchases debts. It can take time and be difficult for the collector to provide verifying information.

Prohibited Conduct

The FDCPA places the following limits on debt collection practices:

- *Collection Hours* - Collectors may only telephone consumers within the hours of 8:00 a.m. to 9:00 p.m.
- *Workplace Restrictions* - A debt collector may not contact the debtor at her place of employment or contact the employer once made aware that it is unwelcome by the employee or employer.
- *Abusive Collection Practices* - A collector cannot employ abusive practices to collect the debt.
 - *Example:* This may include excessive, harassing phone calls, or abusive language.
- *Deceptive Practices* - The debt collector is prohibited from using deceptive practices or misrepresentations in order to collect the debt.
 - *Example:* The debt collector cannot incorrectly represent that it is an attorney, law enforcement officer, or threaten arrest or prosecution for failure to pay the debt. Further, the debt collector cannot file or threaten to file a false credit report against the debtor.
- *Publicly Communicating Debt* - The debt collector is prohibited from disclosing and discussing the debt with those other than the debtor, the debtor's spouse, or representative. Further, the collector may not publish the debt publicly or list the debtor on a debt collection list. This prohibition extends to communication methods that are used to identify and embarrass debtors.
 - *Note:* The collector may not contact the debtor if aware that she is represented by legal counsel, unless the attorney will not respond. The collector may make limited contact with friends, family, neighbors, or co-workers, but only if necessary to locate the debtor. The collector may not contact any third party more than once. The collector may employ a process known as "skip tracing" to locate the debtor, but it cannot announce the existence of a debt.
 - *Example:* The debt collector cannot mail or otherwise use notification print, postcards, telegrams, or other displays that are deemed to identify and seek to embarrass the debtor. She may, however, indicate her business name on the correspondence.
- *Collection Amount* - Debt collectors may only seek to collect an amount representing by the original debt and in accordance with state law.
 - *Note:* State law may allow the accrual of interest and other fees.

- *Request to Cease Communication* - Consumers may provide collectors with written notice that the debtor refuses to pay (disputes) the asserted debt and request the collector cease any further contact. Once the collector receives this written notice, she cannot contact the consumer except to notify the debtor that collection efforts are halted or that the debtor intends to pursue legal action.
- *Legal Representative* - If a debtor provides notice to the collector that she is represented by legal counsel, the debt collector may not contact the debtor and may only communicate with a legal representative about the debt.
- *Verification of Debt* - If the debtor requests verification of the debt, the collector may not pursue collection efforts until the debt is verified.
 - *Note:* For this prohibition, collection efforts does not include filing a lawsuit. A debt collector or the creditor may begin a legal action at any time to recover the amount owed.

Enforcement of the FDCPA

The CFPB is charged with enforcing the FDCPA. The CFPB may initiate investigations and pursue civil or criminal actions against violators. Consumers may also file a civil action against debt collectors violating the FDCPA. A plaintiff may recover actual damages, statutory damages, attorney's fees, and court costs from debt collectors. A debt collector may avoid liability by demonstrating that violations are unintentional and the result of a good faith error. Likewise, a consumer can be responsible for attorney's fees if the court determines that the consumer filed the action in bad faith.

- *Note:* Numerous state laws also regulate debt collection. The FDCPA does not preempt state laws regulating debt collections so long as they do not conflict with enforcement of the FDCPA.

- **Discussion:** How do you feel about the objectives behind the FDCPA? Do you think the disclosure provisions are adequate? Do you think that the disclosure requirements and prohibitions achieve this objective? Why or why not?
- **Practice Question:** Erin is an attorney who routinely represents business clients. ABC Corp is a client and sends Erin a request to undertake collection efforts against Jerry, a customer of ABC Corp. If Erin communicates with Jerry about the debt, what must she disclose to him? What are the limits on the means that Erin can employ to collect the debt? If Erin employs abusive practices in collecting the debt, what are Jerry's options in protecting his rights?
- **Resource Video:** <http://thebusinessprofessor.com/fair-debt-collection-practices-act/>

12. What is the "Fair Credit Billing Act"?

Overview

The Fair Credit Billing Act (FCBA) was passed as an amendment to TILA with the purpose of protecting consumers against unfair billing practices. The FCBA is administered by FTC and applies within the consumer's home state or 100 miles of home. These provisions are enforced against banks and other financial institutions insured by the Federal Deposit Insurance Corporation (FDIC). The primary protections of the FCBA limit liability on lost, stolen, or misused credit cards

to \$50. It also establishes a method for consumers to address billing errors in open-end accounts, such as credit cards and lines of credit. Further, it allows the credit card holder to assert a defense against paying a merchant for shoddy or defective merchandise.

Methods of Disputing a Debt

Consumers have authority under the FCBA to dispute errors in open-end accounts. To dispute a bill on the account, the consumer must send written notice to the creditor within 60 days of receipt of the account statement containing the error. There are provisions in place to make certain notice is sent to the correct department. The creditor must acknowledge receipt of the dispute within 30 days. The creditor must then investigate the dispute. This generally means undertaking simple substantiation measures with the individual paid by the account, such as a vendor or service provider. The creditor must either correct the disputed debt or explain to the debtor why it believes the debt is valid. The consumer may request all information collected to substantiate the debt.

Enforcement

Enforcement of the FCBA is done through private action. That is, failure of a financial institution to adhere to these provisions gives a consumer the ability to bring a private action against the creditor. The FCBA allows for actual damages, statutory damages of twice the finance charges, court costs, and attorney's fees.

- **Discussion:** Why do you think federal law provides these consumer protections for clients of federally insured institutions? Should these provisions apply outside of just federally insured institutions? Do you think the procedure for disputing a debt is sufficient to protect consumers?
- **Practice Question:** Mandy has a credit card with 1st Federal Bank and Trust. She generally makes certain that the charges on the card draft automatically from her bank account every month. One day, when reviewing her credit card statement, she notices a series of unexplained charges. She now wants to dispute these charges? What information do you need to know to determine if Mandy is protected from having to pay the charges?
- **Resource Video:** <http://thebusinessprofessor.com/fair-credit-billing-act/>

13. What is the “Electronic Funds Transfer Act”?

The Electronic Funds Transfer Act (EFTA) was passed with the purpose of regulating the practice of transferring funds electronically. More specifically, the EFTA applies to electronic transfers of money between two separate institutions. It does not apply to automatic account transfers within the same financial institution. The EFTA is administered by the Federal Reserve Board.

- **Example:** The EFTA does not apply to an automatic monthly account deductions to be deposited into the consumer's saving account in that same financial institution. It does not apply to automatic transfers from accounts held by a financial institution to a consumer's account with that institution, such as where there is an automatic payment for a mortgage held by Big Bank from the consumer's bank account at Big Bank. Rather, it does not apply to cards with a stated value on the face of the card, such as gift cards.

Consumer Protections

The EFTA protects a consumer for lost, stolen, or misused debit cards. These protections are similar to the protection afforded under the FCBA. Responsibility for loss in such situations is allocated between the transferring financial institution and the consumer. A consumer's liability in such a case is limited to \$50 if the consumer follows the appropriate procedure. The consumer must report the misuse of a debit card within 2 days of learning of the misuse. If the consumer fails to report a misuse within 2 days of learning of it, her potential liability moves up to \$500. If she fails to report a misuse for more than 60 days, the EFTA does not place any limits on the consumer's responsibility for losses. The EFTA prohibits creditors from requiring that a consumer repay a debt *via* electronic funds transfer. Lastly, any state law or contract that subjects a customer to greater liability than that mention above is preempted by the EFTA.

- *Note:* The EFTA does not give the consumer the right to stop payment on an electronic transfer.

Responsibility of Financial Institution

If a consumer's card is lost or stolen, the financial institution must provide her with notice of her potential liability. It must also provide a method for reporting the lost or stolen card and provide instructions on resolving the issue. If a consumer reports an erroneous fund transfer, the financial institution must investigate the error and resolve it within 45 days (or 90 days in limited circumstances). If the financial institution takes more than 10 days (20 days for new accounts) to complete the investigation into the transfer error, it must re-credit the customer's account for the amount in question. In any event, the financial institution must notify the customer of the results of investigation. If there is a confirmed error, the financial institution must correct it or make re-credit to the consumer's account final. If there is no error, the financial institution must explain in writing the reason or justification for the transfer. It must also notify the customer that any temporary re-credit to the customer's account will be deducted from the account.

- *Note:* The customer has the right to ask for copies of any documents relied upon in the investigation.

- **Discussion:** How do you feel about the EFTA placing the risk of loss for lost, stolen, or misused debit cards on the financial institution? Can you think of arguments for and against this allocation? What do you think is the purpose of allowing for escalating liability of the cardholder? Do you think the investigation and resolution responsibilities of the financial institution are adequate? Why or why not?
- **Practice Question:** Irene is going on vacation. Immediately before her trip, she notices some strange charges to her bank account. She also realizes that she cannot find her debit card. She decides not to worry about it and continues on her trip. When she returns, she reviews her bank statement there are dozens of unexplained charges. If she now reports the unexplained charges, what are her responsibilities? What are the responsibilities of the bank in this situation?
- **Resource Video:** <http://thebusinessprofessor.com/electronic-funds-transfer-act/>

CONSUMER PRODUCT PROTECTIONS

This section includes a brief discussion of the various consumer protection statutes relating to consumer products.

14. What is the “Consumer Product Safety Act”?

The Consumer Product Safety Act (CPSA) was passed for the purpose of protecting consumers against dangerous products. The CPSA encompasses several consumer protection acts, such as the Poison Prevention Packaging Act (PPPA) and the Consumer Product Safety Improvement Act (CPSIA). The CPSA established the Consumer Product Safety Commission (CPSC), which is charged with administering the provisions of the CPSA along with its regulatory provisions. The CPSC has authority over most consumer products, except those that are expressly relegated to a separate federal agency. The CPSC has authority to establish product safety standards, seek the recall of, and potentially ban, products that are unreasonably dangerous or present a significant risk to consumers.

- *Note:* The CPSIA is an important amendment that protects individuals against retaliation for reporting concerns about product safety. It is also dedicated to ensuring the production of safe products for children.
- *Example:* The coverage of the CPSC is very broad. Examples of consumer products specifically relegated to other federal agencies include: food, drugs, tobacco products, firearms, medical devices, aircrafts, boats, etc.
- **Discussion:** How do you feel about the broad authority granted to the CPSC? Do you feel the authority is sufficiently broad? Why or why not? As you have learned, defective products may create strict liability for manufacturers and sellers. Should this be balanced against the above regulations? Why or why not?
- **Resource Video:** <http://thebusinessprofessor.com/consumer-product-safety-act/>

15. What are the applicable labeling laws regulating consumer products?

Labeling laws are administered by a combination of federal and state agencies. Federal agencies heavily involved in product labeling laws include the CPSC, FTC, and FDA. Collectively, federal and state laws require manufacturers to place informative labels and warnings on various types of products based upon product category, materials or substance, and applicable safety standards.

- *The Federal Trade Commission (FTC)* - The FTC has broad authority to regulate consumer products that are not otherwise regulated by a separate agency. Most notably, the FTC places consumer goods into product categories and prescribes specific labeling requirements pursuant applicable statutes, regulations, or industry standards.
- *Food and Drug Administration* - The Food, Drug, and Cosmetic Act is the primary federal law administered by the Food and Drug Administration. The FDA classifies goods falling under its regulatory authority into product groups, such as cosmetic and food labeling. The FDA requires extensive testing and labeling to disclose and avoid potential hazards to consumers. In general, the FDA prescribes the content for labels that must be affixed on the inside and outside of product containers, wrappers, or packaging.
- *Consumer Product Safety Commission* - As discussed above, The CPSC is primarily charged with ensuring consumer product safety. As part of this mission, the agency enforces packaging, labeling and other consumer disclosure provisions. Notably, the CPSA enforces labeling provisions under the Consumer Product Safety Act, Federal Hazardous Substance Act, and Poison Prevention Packaging Act.
- *US Customs and Border Protection Service (CBP)* - The CBP regulates and polices the flow of goods into and out of the United States. It is tasked with enforcing US labeling laws for imported goods. Goods incorrectly labeled may be refused entry into the United States, subject to fines, and destroyed.

- **Discussion:** Why do you think authority for the regulation of consumer products is spread over multiple agencies? Can you think of arguments for and against this practice? Can you think of any products or consumer protections that you believe should be governed by a different administrative agency?
- **Practice Question:** Erwin is considering launching a line of baby products. He plans on manufacturing the products in Asia and importing them into the United States. Some of these products are very similar to products that are already on the market. What administrative agencies may regulate this business activity?

The Fair Packaging and Labeling Act

The Fair Packing and Labeling Act (FPLA) is the primary labeling law in the United States. It was passed in 1967 to require labeling of “consumer commodities”. The provisions of the FPLA are enforced by the Food and Drug Administration and Federal Trade Commission. The primary provisions require that labels disclose the following information:

- type of commodity enclosed,
 - *Example:* A package must state the specific items included within. This is important for items that have multiple parts or require the purchase of additional parts (such as batteries) to function.
- amount of contents, and
 - *Note:* The amount of contents may be measured in both metric and inch and pound measures. The type of measurements must be either the weight, size, or numerical count of items.
- the manufacturer or distributor’s name and location.
 - *Note:* This is generally the office address for communications.

It also allows for regulations that protect consumers against deception with regard to ingredients, contents of packaging, pricing, and packaging size. The Act integrates the standards established by the Office of Weights and Measures of the National Institute of Standards and Technology, US Department of Commerce.

- *Note:* The Globally Harmonized System (GHS) is the United Nations System for classifying and labeling chemicals.

- **Discussion:** Why do you think the Fair Packaging and Labeling Act focuses on the type, amount, and origin of a product? Can you think of any other information that you believe should be included on a consumer product label?
- **Practice Question:** Juan is a US citizen, but he has family in Costa Rica. His family produces plantains that are perfect for making plantain chips. He begins bagging and importing the plantain chips for sale in the United

States. What labeling requirements must his product meet to comply with Federal Law?

Other Notable Labeling Laws

- *Federal Hazardous Substance Act (FHSA)*- The FHSA is a federal law administered by the CPSC. The FHSA requires labeling of containers of hazardous products. The label must provide notice of the potentially harmful effects of contact with the hazardous substance and the first aid steps to take in the event of exposure. Pursuant to this Act, the CPSA may ban products that are unreasonably dangerous or not adequately labeled to protect consumers.
- *Toxic Substance Control Act (TSCA)* - The TSCA was passed in 1976 with the purpose of assessing and regulating new and existing commercial chemicals entering the US Market. The act focuses on chemicals deemed to pose an unreasonable risk to the health or environment. The TSCA is administered by the Environmental Protection Agency. The EPA puts in place regulations that require labeling of the chemicals when shipped in the US.
- *Poison Prevention Packaging Act (PPPA)* - The PPPA requires manufacturers to employ child-resistant packaging for certain potentially poisonous items. Covered items include prescription and over-the-counter drugs, household chemicals (such as cleaners), and other hazardous materials (such as poisons).
- *Labeling of Hazardous Art Material Act (LHAMA)* - The LHAMA is a federal act requiring that all art material sold to consumers undergo a toxicology review. The purpose of the review is to identify any potential for adverse health effects and to ensure appropriate labeling of the hazards. Manufacturers must place a statement of compliance with health standards on the substance's container, the consumer invoice, or on the product's retail display.
 - *Note:* Provisions of FHSA apply to art material as well.
- *Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)* - FIFRA was designed to regulate the distribution or sale of pesticides. This generally includes any mixture of substances used to prevent, repel, destroy, or mitigate the presence of insects, fungi, and rodents. It also includes substances used as a defoliant, desiccant, plant regulator, or nitrogen stabilizer. Manufacturers must meet child-protective packaging and labeling requirements. Further, manufacturers and employers must adhere to EPA and OSHA standards for labeling and worker protection.
- *Flammable Fabrics Act (FFA)* - The Consumer Product Safety Commission was given the authority under the FFA to issue mandatory flammability standards. This includes the requirement to place warnings on tags or labels that indicate the product's flammable nature.
 - *Example:* Consumer goods subject to flammability standards include clothing, film, carpet, rugs, and mattresses.
- *Textile, Wool and Fur Acts* - The FTC administers a number of statutes and regulations aimed at regulating fabrics, furs, and textiles in the US. Notably, these laws require consumer goods be labeled with the fiber content, country of origin, manufacturer (or marketer) identity. In the case of clothing, related laws may also require

additional size labeling standards.

- *OSHA Hazard Communication Standard* - Products used in the workplace are subject to the OSHA Hazard Communication Standards. Manufacturers must label chemical containers and develop material safety data sheets that provide detailed information about the material.

- **Discussion:** How do you feel about the diverse authorities regulating the labeling of consumer products? Are there any benefits or detriments to such extensive legal requirements?

- **Practice Question:** Dolly is a chemist. She has developed several interesting chemical solutions aimed killing insects and rodents, household cleaning of wood and metal, and maintaining industrial equipment. If Dolly decides to sell her solutions to the public, what federal laws will govern the production and sale of her products.

- **Resource Video:** <http://thebusinessprofessor.com/product-labeling-laws/>

16. What is the Federal Food, Drug, and Cosmetic Act?

The Federal Food Drug and Cosmetic Act (FFDCA) was passed for the purpose of ensuring the safety of food, drugs (some medical devices), and cosmetics. The act gave authority to the Food and Drug Administration (FDA) to administer the provisions of the Act. It is a broad Act including provisions for electronic radiation control, provisions for effective testing and marketing of drugs, and bioterrorism preparation. The FFDCA contains both civil and criminal penalties for violation of its provisions. Repeated, intentional, and fraudulent violations of the Act are generally subject to criminal action.

- **Discussion:** Why do you think Congress made special provision for protection of consumers of food, drug, medical, and cosmetic items? Do you think there are other items that should be covered in this category? If so, which ones?

- **Practice Question:** Juliet has a Halloween store. She has decided to launch her own line of Halloween makeup. She will produce the makeup locally and sell it through her store. What consumer protection laws specifically control producing and selling this type of product?

- **Resource Video:** <http://thebusinessprofessor.com/federal-food-drug-and-cosmetics-act/>

17. What is the “Magnuson-Moss Warranty Act”?

Overview

The Magnuson-Moss Warranty Act (MMWA) was passed to protect consumers by regulating the use of warranty and disclaimer provisions by merchants. Generally, warranties are the subject of state contract law. The MMWA is a federal law administered by FTC; but it does not limit a consumer’s rights under any other state or federal consumer protection

law. The provisions of the MMWA regulate how warranties are presented to purchasers of consumer products. It seeks to ascertain that warranties are presented in a manner that is “readily understood” by the consumer. It applies to full and limited warranties of goods, but warranties on services for repairs are not covered. While merchants are not required to provide a warranty on products, if a warranty is provided it must comply with the MMWA provisions.

- *Note:* States have consumer protection laws ranging from the application of warranties under state commercial codes to various antifraud statutes.

Requirements of the Act

The FTC requires that a merchant warranting a consumer product disclose, fully and conspicuously, in simple and readily understood language, the terms and conditions of the warranty. The disclosure provisions are most important when a merchant provides a limited warranty, as the consumer must understand all of the limitations associated with the warranty. When a merchant fully warrants a product against defect, the warrantor must comply with the following provisions:

- *Repair or Replace* - The merchant must fix or replace the product without charge, within a reasonable time. If, after reasonable effort is made to repair the item, the product or a component part still has a defect, the consumer can either receive a refund or free replacement of the item.
- *Limitations on Implied Warranties* - The merchant may not limit the time period for any implied warranties;
- *Limitations on Damages* - A merchant may only limit its liability for consequential damages arising from a breach of any written or implied warranties if that disclaimer is conspicuously written on the face of the warranty document.
- *Branded Components* - A merchant cannot tie the enforceability of warranty provisions to the use of branded parts or materials for repair.
- *Exercise Warranty Rights* - A merchant may not require that a consumer undertake any steps (other than notification of a defect or nonconformity and return to a place of repair) in order to enforce her warranty rights.

The above standards are not required if a merchant can demonstrate that the cause of a defect or malfunction is due to damage, failure to maintain, or misuse of the product while in the consumer’s possession.

Remedies

The MMWA allows for civil actions by the FTC or by private parties. A civil action by private parties may seek damages in state or federal court. A federal court action must have an amount of damages in controversy of \$50,000 or more or have 100 plaintiffs in a class. A successful plaintiff may recover actual damages, court costs, and attorney’s fees. An action by the FTC generally seeks injunction against a merchant barring the subject practice.

- *Note:* The Act also prescribes informal dispute-resolution procedures for resolving an alleged breach of warranty and violation of the MMWA. Merchants, in the sales contract, may require mediation or arbitration of disputes regarding full warranties.

- ***Discussion:*** Why do you think Congress established a federal standard for contract warranty protection? Do you

think that federal law protection beyond state law protection is warranted? Why or why not? Do you think that the mandatory warranty provisions are adequate or excessive? Why or why not?

- **Practice Question:** Carly purchases a mobile generator to use at parties and tailgates. The dealer represents that the generator comes with a full warranty for 12 months. Just one month after purchasing the generator, Carly is using it to power the lights at a tailgate and it catches on fire. When Carly attempts to return the generator to the dealer, the dealer explains that she must complete extensive paperwork that must be sent to the manufacturer before the warranty is honored. Carly is not happy. What are her rights in this situation?
- **Resource Video:** <http://thebusinessprofessor.com/magnuson-moss-warranty-act/>

CONSUMER PRIVACY PROTECTIONS

This section includes a brief discussion of the various consumer protection statutes relating to individual privacy and the collection of information.

18. What is the “Privacy Act of 1974” (Privacy Act)?

The Privacy Act restricts the ability of the Federal Government to collect information about individual US citizens. Specifically, it regulates the use, maintenance, and dissemination of collected personally-identifiable information. “Personally-identifiable information” either contains the name or other information that allows the information to be attributed to a specific individual. These regulations are contained in what is known as the Code of Fair Information Practices. This regulatory framework controls all records in the possession and control of the Federal Government. Any agency in possession of such information must employ administrative and physical security measures to protect against the dissemination of the information. All federal agencies, particularly those that collect personally-identifiable information, must provide public notice of their records and systems *via* the Federal Register. The system must also provide a means by which individuals may seek access to and amend any erroneous material in their records. Consent of an individual is required before the agency may disclose that person’s personal information. There are, however, several exceptions where a federal agency may disclose personally-identifiable information about an individual without notifying the person:

- For statistical purposes by the Census Bureau or the Bureau of Labor Statistics;
- For routine uses within a US government agency;
- For archival purposes "as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government";
- For law enforcement purposes;
- For congressional investigations; and
- Other administrative purposes.

Agencies must also have a Data Integrity Board that reports all complaints about Privacy Act violations to the Office of Management and Budget. The Privacy Act was amended to include provisions regarding the use of Privacy Act information in automated matching programs (such as criminal records programs).

- *Note:* Records held by courts, executive components, or non-agency government entities are not subject to the provisions in the Privacy Act and there is no public right to these records. Information collected pursuant to

criminal investigation may also be exempt from disclosure.

- **Discussion:** How do you feel about the collection of personal information by the Federal Government? Do you think that the requirement that administrative agencies disclose the collection of personally identifiable information is an adequate safeguard of individual privacy rights? Why or why not? Does the ability to dispute inaccurate information affect your opinion? Why or why not?
- **Practice Question:** The National Security Agency (NSA) has decided to monitor computer traffic to websites advocating the overthrow of the US Government. The agency's monitoring reveals a computer user's IP address. The IP address is then matched with a physical address where the IP address is registered. The physical location is matched with the real property records providing the owner's name and personal information. All of this information is stored in case it is needed in a future investigation. What procedures must the NSA follow to comply with federal privacy law protections?
- **Resource Video:** <http://thebusinessprofessor.com/privacy-act-of-1974/>

19. What is the "Right to Financial Privacy Act of 1978" (RFPA)?

The RFPA places limitations on the ability of the Federal Government to seek financial records about an individual from banks or other financial institutions. The RFPA applies only to the Federal Government. It does not govern requests for financial records made by private businesses or state or local governments. Further, the RFPA only protects the records of individuals and partnerships with 5 or fewer partners. It does not protect the financial information of other business entities. The Federal Government may access such records in the following instances:

- the customer authorizes access;
- there is an appropriate administrative subpoena or summons;
- there is a qualified search warrant;
- there is an appropriate judicial subpoena; or
- there is an appropriate written request from an authorized government authority.

If the Federal Government seeks to obtain these records, it must notify the individual whose records are requested. The customer then has 10 days from the date of written notice to challenge the disclosure. The RFPA allows for statutory damages of \$100 for each violation.

- *Note:* The FRPA allows for disclosure without notice to the individual consumer in a number of instances, including use in a civil or criminal proceeding or certain national security investigations.

- **Discussion:** Why do you think Congress placed limitations on the ability of the Federal Government to access the financial records of individuals? Do you believe the requirement to notify the individual of the request and the period to dispute the disclosure adequately protect the individual's privacy rights? Why or why not?
- **Practice Question:** Clayton is suspected of tax evasion and racketeering. The IRS and FBI open an joint investigation into his conduct. These agencies want to access Clayton's financial records with several banks. What process must the IRS and FBI follow before sending a request to these financial institutions for Clayton's records?

- **Resource Video:** <http://thebusinessprofessor.com/right-to-financial-privacy-act/>

20. What is the “Electronic Communication Privacy Act of 1986” (ECPA)?

The ECPA protects individuals against unlawful interception of electronic communications by the Federal Government or individuals. Specifically, it restricts the ability to undertake wire taps, computer transmissions, stored electronic communications, and tracing of telephone communications, etc. It is a federal crime to undertake such activity without first receiving a court order or obtaining consent from a party to the communication. This means that one party to the conversation may record the conversation without another party’s knowledge. The Act protects communications while being made, as well as records of past communications. It is also a crime to use or disclose information obtained through this illegal means.

- **Note:** The ECPA does not cover video recordings without an audio recording component. States may further restrict the ability of individuals and the government to record private communications. Notably, some states require the consent of both parties before a communication may be recorded. The ECPA establishes higher standards for search warrants for active communications. The standard is not raised for records of communications.

- **Discussion:** How do you feel about the ability of the Federal Government and individuals to record private communications? Should the government have broader or narrower rights to record communications? Should both individuals be required to consent before recording an communication? Why or why not?
- **Practice Question:** ABC Corp has a retail store that is very popular. In order to gain greater understanding of their customer’s purchasing habits, ABC Corp sets up cameras and microphones in its stores in hopes of recording information about consumer preference for their products. Is what ABC Corp doing illegal?
- **Resource Video:** <http://thebusinessprofessor.com/electronic-communication-privacy-act/>

21. What is the “Children’s Online Privacy Protection Act of 1986” (COPPA)?

COPPA was passed to protect against the online collection of personal information of children under the age of 13 years. Enforcement of COPPA is charged to the FTC, which issues regulations for its enforcement. The rules regulate commercial websites, online services, mobile apps, etc., that collect personal information from operators of the site. More specifically, COPPA applies to any site that collects personal information and is targeted toward children under 13 years old or sites that collect information with knowledge that children under the age of 13 years are using the site. COPPA also applies to individuals or businesses that collect this type of consumer information off of the websites of others. Operators of such sites must comply with the following provisions:

- **Online Privacy Policy** - Inform users of their practices of recording user information;
- **Parental Consent** - Provide notice to parents of the intent to collect children’s information and obtain parental consent;

- *Limited Disclosure* - Prohibit the disclosure of information collected about children, except in limited circumstances;
- *Parental Review* - Allow parents to review (and request deletion) of the collected information;
- *Parental Limitations* - Allow parents to prevent further use or future collection of the child's information;
- *Confidentiality* - Maintain security in the storage of information; and
- *Limited Retention* - Not maintain the information longer than necessary, and delete the information after it has served its intended purpose.

- **Discussion:** Why do you think Congress provided special privacy protections for children under 13 years of age? Do you believe the current restrictions are effective in achieving the objectives of COPPA? Why or why not? Do you think the requirements on businesses collecting information on the website are overly onerous? Why or why not?
- **Practice Question:** Carole started a website that allows children of all ages to play games that help them learn math. Users are required to log into the site and she records all of the information about the user and how they use the site. What standards must Carole's website meet to avoid a violation of federal law?
- **Resource Video:** <http://thebusinessprofessor.com/childrens-online-privacy-protection-act/>

22. What role do states play in consumer protection?

States pass and enforce any number of consumer protection laws. These laws sometimes offer protections in addition to those offered by federal law. State laws protecting consumers are generally known as Unfair and Deceptive Practices (UDAP) statutes. Common areas regulated by UDAP statutes include: extension of credit, insurance, utilities, post-sales acts, and real estate.

- **Example:** A commonly recognized type of state consumer protection statute concerns the sale of automobiles. These statutes grant the purchaser of an automobile the right to return the automobile within a specified period of time if the purchaser identifies mechanical issues in the vehicle. These are commonly known as "lemon laws".
- **Discussion:** Why do you think states feel the need to offer additional protections beyond those afforded by federal law? Can you think of any advantages to seeking enforcement of one's rights under state, rather than federal, law?
- **Practice Question:** Patrick believes that he has been defrauded by a local used car salesman. He is considering bringing a legal action against the car dealer. What are Patrick's options with regard the jurisdiction and type of legal action to bring against the dealer?
- **Resource Video:** <http://thebusinessprofessor.com/state-consumer-protection-laws/>