

Debt Collection:
Know your rights

Seminar lesson plan and class activities



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Lesson purpose:

To inform consumers of their rights when they owe a debt, enable them to respond safely and effectively to a debt collection call, letter or lawsuit, and make them aware of legal resources and how to file a complaint.

Learning objectives:

By the end of the lesson, participants will understand:

- Their rights when they owe a debt
- What to be aware of when responding to a collection call
- How to spot a debt collection scam
- How to communicate effectively with a collector
- How to improve their chances of avoiding legal action
- Generally how the debt collection legal process works
- What can happen if they lose a creditor lawsuit
- Where to find free and low-cost help
- Where to file a complaint

Lesson duration:

2½ hours

Materials:

For instructor:

- *Debtors' Rights: Protecting yourself from debt collection lawsuits* (brochure)
- *The Fair Debt Collection Practices Act: How it restricts collectors and protects consumers* (brochure)
- Visual teaching aid (PowerPoint presentation with instructor's notes)
- Lesson plan, including activities, answer keys and resources (pages 3-27)
- Class evaluation form (page 28)

Instructor will also need:

- A computer and projector for the PowerPoint presentation (the PowerPoint slides also can be printed on transparency sheets for use with an overhead projector); and
- An easel and pad, or a whiteboard, and markers.

For participants:

- *Debtors' Rights: Protecting yourself from debt collection lawsuits* (brochure)
- *The Fair Debt Collection Practices Act: How it restricts collectors and protects consumers* (brochure)
- When a collector calls (exercise) (2 pages)
- Know your rights (exercise) (1 page)
- Class evaluation form (1 page)

Optional:

- Printout of the PowerPoint presentation
- *When a collector calls: An insider's guide to responding to debt collectors* (brochure)

Lesson outline:

- Welcome and training overview (5 minutes)
- Your rights when you owe a debt (15 min)
- Communicating with a collector and avoiding scams (20 min)
- Exercise: When a collector calls (10 min)
- Avoiding a legal action (15 min)
- Responding to a lawsuit (20 min)
- Understanding garnishment (20 min)
- Exercise: Know your rights (10)
- Getting legal help (10 min)
- Filing a complaint (10 min)
- Questions and answers (10 min)
- Wrap-up and evaluation (5 min)

Note: *The materials produced by Consumer Action are for informational purposes only and not for the purpose of providing legal advice or for preparing others to provide legal advice. If you are a consumer, it is highly recommended that you contact a qualified attorney experienced in the laws of your state to obtain advice with respect to any particular issue or problem. If you are disseminating information provided by Consumer Action, you should present it as general legal information only, not legal advice (the application of law to an individual's particular circumstances), and encourage consumers to consult an attorney or legal aid resource if they need advice.*

Instructor's notes:

This training module consists of two fact sheets/brochures (*Debtors' Rights: Protecting yourself from debt collection lawsuits*, *The Fair Debt Collection Practices Act: How it restricts collectors and protects consumers*); a lesson plan with class activities; and a PowerPoint presentation. It was created by the national non-profit organization Consumer Action to be used by non-profit organizations providing consumer education in their communities. The entire module can be found online at http://www.consumer-action.org/modules/module_debt_collection.

Before conducting the training, familiarize yourself with the fact sheets, the lesson plan (including activities) and the PowerPoint visual teaching aid.

The PowerPoint presentation contains notes for each slide (appearing below the slide when in Normal view or Notes Page view). These notes offer detailed information about the items appearing on the slide. The learning objectives for each section, along with key points and questions to generate discussion, are included in the lesson plan, as are indicators telling you when to move to the next PowerPoint slide.

Why Adults Learn, a PowerPoint training for educators, provides tips for teaching adults and diverse audiences—it will be helpful to you even if you have taught similar courses before. The slide deck is available at http://www.consumer-action.org/outreach/articles/why_adults_learn/.

Note: The materials in this training module are for informational purposes only and not for the purpose of providing legal advice. It is highly recommended that consumers contact a qualified attorney experienced in the laws of their state to obtain advice with respect to any particular issue.

WELCOME AND TRAINING OVERVIEW (5 minutes)

➔ **SLIDE #1** (onscreen as participants arrive; direct early arrivals to begin reading the fact sheets)

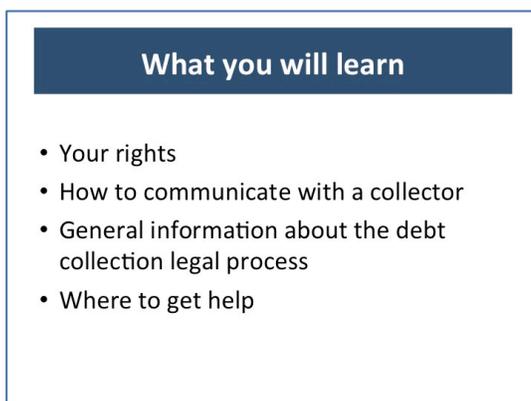


Welcome participants and introduce yourself.

If you have a small group, you can ask individuals to introduce themselves (or, if time permits, ask them to pair off with someone seated near them and then introduce each other to the group) and tell you what they hope to get out of the training. In a larger group, invite a few volunteers to share their expectations. On your whiteboard or easel pad, jot down some of the specific things participants mention. You can come back to this at the end of the class to make sure you've covered these points. (This activity is designed to serve as a brief icebreaker. It will also give you an idea what participants' expectations and needs are.)

Review the contents of participants' packets. Ask the class to take a look inside their packets and make sure they have all the materials needed.

➔ **SLIDE #2**



Present the learning objectives of the training (also listed on the first page of this lesson plan).

YOUR RIGHTS WHEN YOU OWE A DEBT (15 minutes)

Learning objective: Be aware of the rights granted under federal and state law to consumers who owe a debt and/or are being contacted by a collector.

Key points (slides 3-5):

- Federal and state laws regulate what collectors can and can't do.
- The main federal law that governs collectors is the Fair Debt Collection Practices Act (FDCPA).
- Generally speaking, federal law supersedes state law unless state law provides greater protections.
- The statute of limitations is the length of time a creditor or collector can make a legal claim against a debtor.
- Some important consumer rights come into play during the very first call or letter you get from a collector.
- The validation notice is a crucial document that helps you understand the debt and your rights.
- There are consequences for a collector who does not follow the law regarding collection tactics, licensing requirements and interest rates.
- You should never ignore a collection letter.

Questions to generate discussion:

- Why do you think the federal and state governments felt it was necessary to create debt collection laws?
- What laws are you familiar with that protect consumers who owe a debt? Do you feel they are effective? Are there any specific laws—or changes to existing laws—that you think are needed to further protect consumers who are contacted by collectors?

Note: When generating discussion, allow a moment or two for participants to respond. You can jot down responses on your easel pad or whiteboard.

➔ SLIDE #3

Introduction: Though it might not always seem like collectors have to follow strict rules when collecting a debt, they do. Federal and state laws have been enacted to protect consumers by regulating what collectors can and can't do. Of course, that doesn't mean that all collectors follow all the rules all the time. It's important for consumers to know their rights under the law so that they can exercise them as needed and also recognize when a collector is violating their rights.

Go over slide notes.

Your rights when you owe a debt



Slide notes: Federal and state laws regulate what collectors can and can't do.

Federal law: All U.S. consumers receive equal protections under federal law. The main federal law that governs how collectors can do business is the Fair Debt Collection Practices Act (FDCPA), enforced by the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB). (More on the FDCPA in the next slide.)

State law: Some states have laws that provide even stronger protections for their residents than federal law does. For example, California's Fair Debt Collection Practices Act covers more types

of collectors, including original creditors collecting debts on their own behalf, and its Fair Debt Buying Practices Act requires debt buyers to have and provide proof that you owe the debt and limits when a debt buyer can take collection action. Find your state's fair debt collection laws, if any, at Nolo.com (bit.ly/Nolo-state-debt-laws), Privacy Rights Clearinghouse (<https://www.privacyrights.org/consumer-guides/debt-collection-and-your-rights>) and/or your state attorney general's office (bit.ly/find-ag).

Statute of limitations: State law determines the statute of limitations on different types of debt. Once a debt becomes "time-barred" (in other words, the statute of limitations runs out), the collector can't make a legal claim against you. That doesn't mean you don't owe the debt or that the collector has to stop trying to get you to pay, or that the delinquency will be removed from your credit report before it ages off (typically in seven years)—only that the collector can't sue you and get a judgment against you in court and, therefore, can't take steps to force you to pay (wage garnishment, for example). (See the FTC's "Time-Barred Debts": bit.ly/FTC-time-barred.) Check your state's statutes of limitations at Bankrate.com (bit.ly/bankrate_SOLs) and/or Nolo.com (<http://bit.ly/29a4cf3>). However, even though a debt collector is not supposed to sue you after the statute of limitations has expired, it does happen. A court could still award a judgment against you if you are sued but don't show up and raise the age of the debt as a defense. Ordinarily, it is the responsibility of the person being sued to prove to the court that the statute of limitations has expired. For example, you may need to show that there has been no activity on the account for a certain number of years. (Keep in mind that these deadlines do not apply to federal or state tax bills, federally guaranteed student loans or spousal or child support.) Learn about how the statute of limitations is calculated (in other words, when the clock starts ticking) and in what cases it might be suspended in Nolo's "Calculating the Statute of Limitations" (<http://www.nolo.com/legal-encyclopedia/free-books/small-claims-book/chapter5-3.html>).

Licensing requirements: Some states require collectors to be licensed. If a debt collector wins a lawsuit against you without a required license, the judgment could be voided. (You can find out if collectors have to be licensed in your state from the state attorney general's office.)

Interest rate caps: Most states impose an interest rate cap—a "usury law" that prohibits lenders from charging exorbitant interest rates. If a loan's interest rate exceeds the state's maximum, the lender could be fined, a portion of the finance charges could be erased or the contract could be deemed unenforceable. You can find a list of state rate limits at LendingKarma.com (bit.ly/usury-laws). Unfortunately, usury laws do not apply to certain types of debt (business loans, for example) or to banks, savings and loans, or credit unions—and, therefore, credit cards. Under federal law, these lenders are allowed to charge interest rates and fees greater than those permitted under applicable state law. (Federal credit unions, however, despite not being subject to usury laws, are limited under the Federal Credit Union Act to a relatively low interest rate (18% at least through March 10, 2017) on most loans they make.) Whether a debt buyer (a collector that buys unpaid debts for a fraction of the balance due and tries to collect on them, keeping whatever it can get) can continue to charge an interest rate that exceeds the state's usury cap after it purchases the debt from a bank, S&L or other exempt lender is another question. In mid-2015, a federal appeals court decided that non-bank debt buyers cannot charge what would be usurious interest rates in their state. Although the decision may not be binding in your state, it could be a defense that would prevail in your debt collection lawsuit. It is best to contact an attorney for updated information and advice on this.

➔ SLIDE #4

Go over slide notes.

Fair Debt Collection Practices Act

Federal law prescribes what third-party debt collectors:

- **Must** do
- **Can** do
- **Cannot** do

Slide notes: The main federal law that governs collectors is the Fair Debt Collection Practices Act (FDCPA). It prohibits debt collectors from using unfair, abusive or deceptive tactics when collecting debts. The FDCPA applies *only* to debt collectors (collection agencies working on behalf of a creditor, lawyers who regularly collect debts, and companies that buy delinquent debts and try to collect them (debt buyers).) It generally doesn't apply to the original creditor (the company from whom you borrowed the money). It covers the collection of mortgages, credit cards,

medical debts, and other debts mainly for personal, family or household purposes. It doesn't apply to business-related debts.

The lists below are not exhaustive, but highlight some key FDCPA rules.

Under the law, debt collectors **must**:

- Identify themselves
- Send written notification of the debt
- Provide written verification of the debt if you request it or dispute the debt
- Cease collection efforts until they've mailed verification to you
- Stop collection efforts entirely if the debt can't be verified
- Notify credit reporting agencies if the debt is being disputed

Under the law, debt collectors **can**:

- Call you between 8:00 a.m. and 9:00 p.m. unless you tell them in writing to stop
- Contact you at work unless you tell them not to
- Contact your attorney
- Contact your spouse, co-debtors or parents (if you're a minor) unless you tell them in writing not to
- Contact third parties, such as neighbors or co-workers, but only in an attempt to locate you (Collectors cannot reveal that they believe you owe a debt.)

Under the law, debt collectors **cannot**:

- Use unfair, abusive or deceptive tactics when collecting debts
- Say they will take legal action against you if doing so would be illegal or if they don't intend to do so
- Threaten to seize, garnish, attach or sell your property or your wages unless the law permits them to do so and they intend to follow through
- Contact you at inconvenient times or places
- Contact you if you've told them in writing not to, except to tell you that there will be no further contact or that they will be taking specific legal action against you
- Contact you or third parties if they know you have an attorney
- Call you without telling you who they are, including identifying themselves as bill collectors
- Contact you before sending requested verification of the debt
- Continue to collect on a debt that hasn't been verified
- Contact third parties other than your spouse, co-debtors, parents (if you're a minor) or attorney, except to find out your address, phone number or where you work
- Reveal certain information (that you owe a debt, for example) to third parties contacted for your location, or contact them more than once without a valid reason
- Contact you by mail in a way that indicates to others that the piece of mail is from a debt collector
- Try to collect charges in addition to the debt unless they are allowed by the contract or state law
- Use abusive language or profanity
- Harass or embarrass you
- Threaten you in any way, including threatening to arrest you
- Lie to or mislead you
- Report inaccurate information to the credit bureaus

For more information, see:

- Consumer Action's guide to the FDCPA: bit.ly/ca-fdcpa
- FTC's guide to the FDCPA: bit.ly/FTC-debt-collection
- CFPB's "What constitutes an "unfair" practice by a debt collector: bit.ly/2ab0H3A

➔SLIDE #5

Go over slide notes.

When a collector calls



Slide notes: Because, under the law, a debt collector isn't allowed to reveal information about your debt to others, a legitimate debt collector may ask to verify your name, address, month and year of birth, and/or the last four digits of your Social Security number before discussing the debt with you. Once they have verified that you are the right person, they should tell you the purpose of the call and the fact that they are a collector. If asked, the collector must give you the company's name, address, phone number and website address. If you have doubts about the legitimacy of the call, or you do not want to verify your identity by phone, you can tell the collector that you want written notice of the debt sent to the address it has on record before you will discuss it.

Within five days of first contacting you, the collector must send you a written "validation notice." This document contains:

- The amount of the debt, including all interest, late charges, attorney fees, and other charges
- The name of the creditor to whom the debt is owed
- A statement that unless you dispute the debt within 30 days after receipt of the notice, the debt will be assumed to be valid
- A statement that if you notify the debt collector in writing within the 30-day period that the debt is disputed, the collector will mail you verification of the debt
- A statement that in response to your written request, the collector will provide you with the name and address of the original creditor, if different from the current creditor

If the debt collector does not send you this validation notice within five days but continues to pursue you for the debt, they have violated the FDCPA and you have the right to sue them.

You can dispute all or part of the debt or ask for the name and address of the original creditor (if different), **in writing, within 30 days**. If you do so, be sure to keep a copy of the letter and proof of mailing. It's best to send it by certified mail, with a return receipt requested.

There is no deadline by which the collector has to respond, but collection efforts must stop until a response has been sent. The collector can restart collections after responding with the information you requested and/or verification that you owe the debt. If you miss the 30-day deadline, the collector can assume the debt is valid (does not have to verify it) and continue collection efforts during the 30 days and after. However, you may dispute the debt at any time, even if it does not cause collection activities to stop. (The Consumer Financial Protection Bureau offers letter templates you can use when communicating with a collector: bit.ly/2a9dl22.) The dispute and verification process is a strong consumer right designed to provide you with accurate information about the debt so that you can determine what steps to take next.

Note: While many collection efforts begin with a phone call, not all do. You have the same rights when the collector's initial contact is in writing. If you receive a collection letter in the mail, read it carefully. Unless you have reason to believe the letter is a fake, you should respond. Do not ignore collection letters!

Learn more:

- CFPB's "Are there laws that limit what debt collectors can say or do?": bit.ly/2a1YTXp
- Consumer Action's "When a collector calls: An insider's guide to responding to debt collectors": bit.ly/1QqyuaN

COMMUNICATING WITH A COLLECTOR AND AVOIDING SCAMS (20 minutes)

Learning objective: Understand how to communicate with a collector so that you avoid scams, your rights are protected and your communications are productive.

Key points (slides 6-8):

- During the first call from a collector, you should be on guard and take steps to ensure the call and the debt are legitimate.
- While many debt collection calls are legitimate, many others are scams that you can recognize by knowing what tip-offs to look for.
- Just because you don't recognize a collector or debt doesn't mean it's a scam.
- Within five days of first contacting you, the collector must send you a written "validation notice."
- Avoiding a legitimate collector's calls and letters could lead to more aggressive collection efforts.
- You have the right to—and should—request verification (proof) of the debt, as well as the name and address of the original creditor.
- You have the right to dispute the debt at any time.
- It is important to stay calm and respectful during a collection call, keep notes/copies of all communications with a collector and get any agreement in writing.

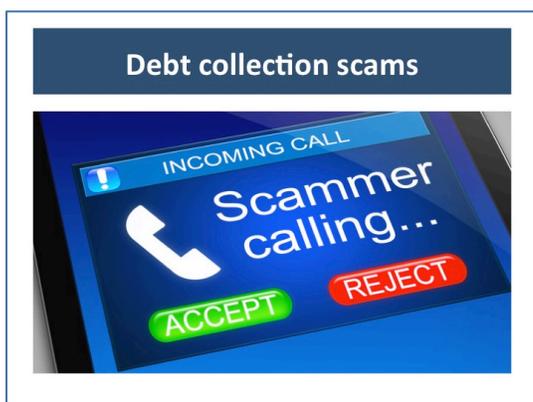
Questions to generate discussion:

- Why do you think scammers are using "collections" as their ruse more often? Have you ever received a bogus collection call? What tipped you off that it was a scam?
- What do you think would be a good reason to dispute a debt that someone is trying to collect from you?
- Have you ever requested your free annual credit reports? What do you think you could learn from your credit reports that would help you handle a collection attempt?
- Have you ever lost your cool when dealing with a business? How do you think it affected the outcome?
- Why do you think it's important to keep good notes and put all agreements in writing?

→SLIDE #6

Introduction: More and more fraudsters are adopting bogus collection efforts as their scam of choice. There are many reasons for this—the high number of consumers who have at least one past-due account, the ease with which fraudsters can gather sensitive information about individuals, technology that allows callers to mask or spoof their caller ID, etc. Their goal: to get you to pay up or to reveal sensitive personal information that they can use to commit identity theft. For consumers, that means being on guard all the time and knowing how to differentiate a legitimate debt collection call or letter from a bogus one.

Go over slide notes.



Slide notes: While many debt collection calls are legitimate, the number of fake (scam) collection calls has exploded. Many of these are related to bogus past-due taxes, but they can be about any type of debt. In many cases, the scams consist of imposters attempting to collect on "zombie" or "phantom" debts—debts that don't exist because they are paid off, discharged, forgiven, time-barred (beyond the statute of limitations) or entirely made up. Many victims pay up out of fear that they might actually owe the debt and will suffer serious consequences for not paying. Or, the scammer seeks personal information that can be used to commit identity theft.

Signs that a debt collection call might be a scam include:

- The caller isn't able to provide your name, address and the last four digits of your Social Security number.
- The caller requests your full Social Security number, complete birthdate or other sensitive personal information.
- The caller refuses to provide information about the collection agency or the debt.
- You don't recognize the debt.
- The caller claims to be from a government agency, such as the IRS, and tells you to wire money or put money on a reloadable prepaid card and provide the code (a government agency will never ask you to do this).
- The caller harasses you, threatens you with arrest, uses profanity or refuses to let you speak to a manager.
- The caller says you must pay up immediately, or else.
- The caller does not send you a written validation notice.

Just because you don't recognize the name of the company doesn't mean it's a scam. Debts are sometimes legally sold, customer service providers change (especially for mortgages and student loans) and companies (especially banks) are bought by other companies. Also, debt collectors often go by different corporate names in the states they are licensed in because their own company names are too similar to businesses already licensed in that state. Here are some tips to protect you until you have confirmed that the caller represents a legitimate collection agency and is contacting you about a legitimate debt you owe:

- Refuse to discuss (or pay) the debt until you receive a written notice about the debt and the collection agency.
- Do not provide sensitive personal or financial information, such as your bank account, credit card or Social Security number.
- If the caller claims to be from a government agency, look up the official number for the collection company and call to confirm. Don't assume a call is coming from the number displayed on your caller ID—scammers use technology to disguise themselves.
- If you think the debt might be legitimate, contact the original creditor to confirm it has transferred or sold your debt to the collection agency that called you.

Every written collection attempt must contain the name, address and phone number of the collection agency that is contacting you. Use this information to do an online search to check that the agency is legitimate. Find out from your state attorney general's office whether or not collectors must be licensed in your state. If so, confirm with the state licensing board or agency that the one you're dealing with holds the required license.

➔ SLIDE #7

Introduction: When you communicate with a collector, your goal is to resolve the problem without giving up your rights or giving the collector a reason to take more aggressive steps against you. Some ways to ensure your discussions are productive include understanding your rights, coming to the discussion prepared, staying calm and respectful, keeping good notes, never agreeing to anything you can't fulfill and putting all agreements in writing. Following these guidelines will help improve the odds of a favorable outcome.

Go over slide notes.

Disputing a debt

- ID theft or mistaken identity
- Incorrect or inflated amount
- Debt has already been paid or settled
- The debt is too old (time-barred)

Slide notes: You have the right to dispute a debt in collections at any time. Reasons to dispute a debt include:

- The debt is the result of identity theft.
- You have been mistaken for someone else.
- It is a medical debt that should have been paid by an insurance company, Medicaid or Medicare, etc.
- You don't agree with the amount of the debt.

- The debt is much larger than what you really owe due to high fees and penalty interest added by the collector.
- You have already paid or settled the debt.
- The debt is too old (time-barred). (If you don't know the statute of limitations on the debt, ask the collector directly. If you do get an answer, it must be the truth. You can also ask what the collector shows as the date of the last payment on the account. This helps determine when the statute of limitations countdown started. If a debt is time-barred and you don't intend to pay it, you might want to make a written request asking the collector to stop contacting you about it. Do not acknowledge that you owe the debt or make a payment—this could extend or revive the statute of limitations.)

The Consumer Financial Protection Bureau offers letter templates you can use to request more information about the debt or to notify a collector that you do not owe the debt: bit.ly/2a9dl22.

Always keep copies and proof of your communications with the collector. Acceptable proof might be email responses, fax confirmations or return receipts for certified mail.

Another important right for all consumers is the right to get your credit report from each of the three major credit bureaus (Equifax, Experian and TransUnion) for free every 12 months at www.annualcreditreport.com. This can be helpful in determining what debts you owe and their status. Not all collectors report debts to the credit bureaus, but it pays to check. You can glean a lot from your credit report, including, in some cases, who the original creditor was, when the debt was transferred or sold to a collector, what the current balance is, when the last payment was, etc. If the debt does not appear on your credit report, it could still be legitimate, but you should get proof of that. (You might also consider checking your specialty consumer reports—specialized reports that track things like consumers' medical history, rental history and other narrow categories of data. Learn more in the Specialty Consumer Reports issue of Consumer Action News: http://www.consumer-action.org/news/articles/specialty_credit_report_issue_fall_2014.)

If you have disputed the debt, the collector is not allowed to report it to a credit reporting agency unless and until it verifies the debt. If it has already been reported, the collector has to notify the credit reporting agencies that the debt has been disputed. After verifying the debt, the debt collector can report it, but only as a "disputed" debt. It is a violation of the FDCPA and the Fair Credit Reporting Act (FCRA) for a collector to report a debt that it knows, or should know, is false.

➔ SLIDE #8

Go over slide notes.

Communicating with a collector

- State contact preference
- Stay calm, respectful
- Keep detailed notes



Slide notes: Once you have determined that the caller is a real debt collector and that the debt is legitimate, it's time to discuss it with the collector. You do have the right to ask the collector to stop contacting you, but avoiding a legitimate collector's calls or letters could push them to take more drastic measures, such as filing a lawsuit. (You can ask for calls to cease and that future communications be by mail.)

While it may not be a good idea to stop communicating with a legitimate collector entirely, you do have the right to tell the collector when you prefer to be contacted (a debt collector cannot contact you at inconvenient times or places). Be sure to put your request in writing. Collectors may not contact you at work if you

tell them (orally or in writing) that you're not allowed to get calls there. (While written notice is not required in this case, it's wise to follow up with a letter so you'll have a record of your request.)

If debt collectors know that an attorney is representing you, they must contact the attorney instead of you *if* they have or are easily able to find the attorney's name and contact information. (You should provide it, if necessary.)

During all your communications, stay calm and respectful—the discussion is more likely to go in your favor. It is a violation of the FDCPA for the collector to use abusive language or profanity; you shouldn't either.

Keep detailed notes of all your communications with the collector, including date, time and content of the discussion. This will help you recall what was discussed and will serve as a record if the collector does anything to violate the FDCPA.

WHEN A COLLECTOR CALLS (EXERCISE) (10 minutes)

Assign participants to work on the seven collection call scenarios on pages 23-24 of the lesson plan. Ask for volunteers to share their answers. (Answer key is on page 25.)

AVOIDING LEGAL ACTION (15 minutes)

Learning objective: Understand what you can do that might help you avoid a creditor lawsuit.

Key points (slides 9-11):

- If you are ordered to appear in court (sued), you should consult with an attorney regarding a defense and/or next steps.
- Typically, the best way to avoid a lawsuit if you have money that could be awarded to the collector by a judge is to communicate with the collector and work out a voluntary repayment plan or a settlement.
- Making promises you don't keep could provoke the collector to sue you.
- A non-profit credit counseling agency is a good source of information and assistance with debt issues.
- Filing bankruptcy may be an option to consider, but you shouldn't make the decision to file, or try to file, without an attorney's advice.

Questions to generate discussion:

- What are some reasons you would want to avoid a debt collection lawsuit? Would you feel comfortable trying to negotiate with a debt collector? Why or why not?
- Are you familiar with credit counseling agencies? Do you know people who have benefited from their services? How?
- What do you think might be some positives and negatives about bankruptcy?

➔ SLIDE #9

Introduction: There are many reasons you might want to avoid a lawsuit—fear of losing the case, high attorney's fees, the time involved in preparing and appearing in court, etc. If your goal is to avoid legal action, there are a few strategies that might work, but it's important to first understand the pros and cons of each option and where you can find professional advice so that you are equipped to make the right choice.

Go over slide notes.

Avoiding legal action

- Determine ability to pay
- Negotiate



Slide notes: If you are sued by a debt collector, you will be served with an order to appear in court (summons). At this point, it's highly recommended that you consult with an attorney.

Since debt collectors would prefer to receive their money without having to take legal action, typically the best way to avoid a lawsuit is to communicate with the collector. The goal would be to assure the collector that you intend to repay the debt or to let the company know that you can't pay the debt. (Since predicting the likely outcome of a suit can be complicated, it's wise to consult

with an attorney before assuming you can't be made to pay because you have no income or assets or because you believe your income is protected. See slide 17 for more about income and assets that are exempt from seizure.)

If you do have income or financial assets that a court could order be taken to satisfy the debt, you might be better off working out a voluntary repayment plan or a settlement. A settlement means you would pay less than the full balance but the debt would be considered paid in full. But again, this is a crucial decision that is better made with the counsel of an experienced non-profit credit counseling agency or a debt collection attorney.

When discussing repayment options, the collector may pressure you to provide immediate payment in full, but you should review your finances before committing to anything. The collector might be quicker to sue you if you miss agreed-upon payments. Explain any circumstances that affect your ability to pay. If necessary, make an appointment for a follow-up call. Reschedule if you can't make it; being a no-show will hurt you.

When negotiating, it helps to know whether you are dealing with a collector working on behalf of the original creditor or a "debt buyer," who purchases unpaid debts for pennies on the dollar and then keeps whatever payment they are able to collect. Debt buyers sometimes are more flexible when it comes to accepting lower payments or settling for a smaller percentage of the original debt. One way to know if you are dealing with a debt buyer is that on your credit report your original creditor shows a \$0 balance owed to them—this means your account was sold. (Despite the \$0 balance to the creditor, your credit report will still reflect a "charge-off.") You can also ask the original creditor directly if it sold your account. Or you can research the company trying to collect from you to find out if it is a third-party collector or a debt buyer. ACA International, an association of collectors, provides tools and information for consumers at its "Ask Doctor Debt" website (www.askdoctordebt.com).

Whatever agreement you come to, ask the collector to put it in writing, on the collector's letterhead, and send you a copy. It should mention the name of the original creditor. Do not make any payment until you receive the agreement. And do not give the collector permission to access your bank account—once the money comes out of your account, it will be difficult or impossible to get back, even if you believe the collector took too much or took it on the wrong date. Send payments by check, or initiate electronic payments using your bank's online bill pay function.

Visit Nolo's "Debt Settlement & Negotiation with Creditors" page (bit.ly/2ap6Lc7) to link to a number of articles that will prepare you to discuss your repayment options with a creditor or debt collector. Some tips offered (bit.ly/2arUuCO) include hinting at the possibility of bankruptcy, and starting very low (around 15 percent of the balance), with the aim of settling for 50 percent or less. It also helps to gather some cash before starting negotiations because you typically can get a lower settlement if you can transfer the funds immediately.

Be aware that making any payment or even acknowledging the debt or promising to make a payment on a time-barred debt could, in some states, reset the statute of limitations. Nolo cautions against accidentally waiving, extending or reviving the statute of limitations (bit.ly/2afgkdO).

➔ SLIDE #10

Go over slide notes.

Credit counseling

- Analyze budget
- Learn your rights
- Explore options
- Debt management plan?



Slide notes: A good way to figure out what you can afford, and to make sure you understand your rights and don't reset the statute of limitations, is to consult with a non-profit credit counseling agency. A credit counselor can go over your budget and help you determine what, if anything, you can manage to pay. Credit counselors also can explain your rights and provide useful information about dealing with specific debt collection issues.

In addition to providing general information and budgeting assistance, credit counseling agencies also offer something

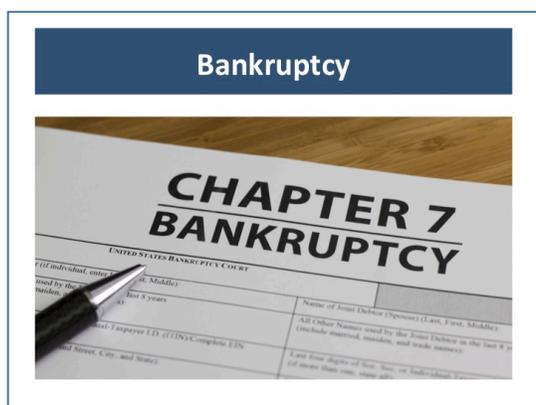
called a debt management plan (DMP), under which your monthly unsecured debt payments would be consolidated into a single payment that you make to the agency. The agency would then disburse the funds to your creditors. There typically is a fee for this (up to \$50/month), but some agencies will waive it if it is unaffordable. The benefit of the debt management plan to consumers is the potentially reduced monthly payments, reduced interest rates, waived fees and agreement to hold off on legal action that the credit counseling agency can often (not always) obtain on its clients' behalf.

Many creditors and some collectors accept debt management plan payments, and typically agree to hold off on legal action as long as they receive the promised monthly payments. But be aware that missing even a single payment could be enough for them to initiate a lawsuit against you.

Find an accredited non-profit credit counseling agency at the National Foundation for Credit Counseling (NFCC) website (www.nfcc.org) or by calling 800-388-2227.

➔ SLIDE #11

Go over slide notes.



Slide notes:

Another option to consider if your debt is too large to pay and you don't see any way out is bankruptcy—either before or after you are sued. A collector cannot continue collecting on an account while the court is considering the bankruptcy case, and it cannot try to collect on a debt that has been discharged (eliminated) in bankruptcy. The fear of losing the ability to collect any part of the money owed because of bankruptcy sometimes makes collectors more amenable to repayment plans or settlement proposals.

Consumer Action offers a general guide to personal bankruptcy (bit.ly/consumer_bankruptcy_guide). Nolo.com also offers extensive information about bankruptcy.

Though there is a lot of “do-it-yourself” bankruptcy information available, you should be very careful about trying to file bankruptcy without a lawyer. A mistake could result in a debt not getting discharged, which means you would still be required to pay it. If you meet low-income requirements, you may be able to get help from an attorney through free or low-cost legal services (see slide 18). If not, first ask friends and family if they can recommend a lawyer. If not, the National Association of Consumer Bankruptcy Attorneys (<http://www.nacba.org>) provides an online directory of its members. Scroll over the “What We Do” tab on the homepage and then click on “Consumer Assistance” in the drop-down menu. Look for a lawyer with expertise and more than a few years’ experience in personal bankruptcy. In many cases, lawyers don’t charge for a brief initial consultation, but to be safe, ask about fees before making an appointment.

If you can't afford to pay a bankruptcy attorney, you may be able to find free or low-cost legal services (see slide 18).

RESPONDING TO A LAWSUIT (20 minutes)

Learning objective: Understand what to expect if you are sued by a debt collector and what steps you should take to protect your rights.

Key points (slides 12-15):

- Ignoring a lawsuit means you will almost certainly lose the case.
- If you are sued for a debt, a qualified attorney can explain your rights and help you avoid missing a possible defense.
- A judgment gives the debt collector stronger tools, such as garnishment, to collect the money you owe.

- Active duty servicemembers have some important added protections against default judgments and garnishments under the Servicemembers Civil Relief Act (SCRA).
- Court-ordered arbitration is non-binding, meaning you can reject the decision and have the case go back before a judge.
- Binding mandatory arbitration is required by many consumer contracts, and tends to favor creditors over consumers.

Questions to generate discussion:

- Do you think it's fair for companies to require binding arbitration for their customers? Why or why not?

➔ **SLIDE #12**

Introduction: Sometimes you can't avoid a lawsuit. If you find out you are being sued, the worst thing you can do is ignore the situation. By being proactive, following instructions, showing up and getting good legal advice, you greatly improve your chances of a more favorable outcome.

Go over slide notes.



Slide notes: If you can't come to a payment or settlement agreement with the collector, you could be subject to a lawsuit, garnishment of your earned income or seizure of your assets (in addition to continued collection efforts and negative credit reporting). If you haven't done so already, you should contact an attorney or legal advice resource for guidance regarding your situation. Don't wait until your case has gone to court to get legal help.

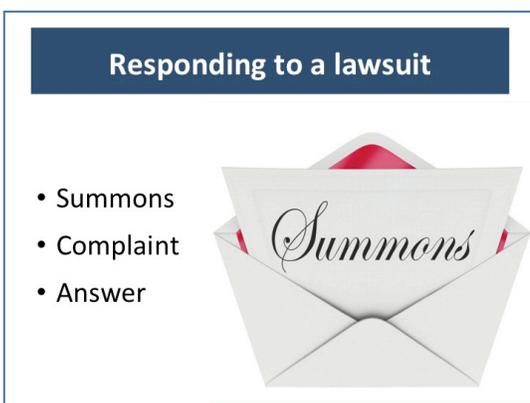
Lawsuit or mandatory arbitration: The creditor or collector can sue you for the unpaid debt. Whether the creditor/collector can win the lawsuit will depend on factors such as the age and validity of

the debt and whether all debt collection laws have been followed. If you do not protect your rights and show up to the hearing, you will almost certainly lose the case. In some cases, depending on your credit/loan contract, you might be required to participate in mandatory arbitration instead of having your case heard in a court. While there are some important differences in process, the results can be the same (garnishment, etc.). (Slide 15 offers more detail about mandatory arbitration.)

Garnishment/asset seizure: The creditor/collector may be allowed to seize the collateral for a secured debt without going to court (for example, repossess the car you purchased with an unpaid car loan). Whether the credit/collector who wins a judgment against you can garnish your wages or seize your bank account, and how much can be taken, will depend on things such as the amount and source of your income.

➔ **SLIDE #13**

Go over slide notes.



Slide notes: You should never ignore a lawsuit. If you're sued by a debt collector, you should respond, either personally or through an attorney, or you should make a conscious, informed decision, based on the facts of your case and the advice of a qualified attorney, *not* to respond. When responding, you must do so by the deadline given in the court papers to preserve your rights.

The court where the complaint is filed determines whether you have to be "served" (delivered) the lawsuit documents in person or can be served by mail. In many states, you will receive notice

of the suit by certified mail. Refusing to accept the letter will not stop the lawsuit. (You can check with a local or state court to learn what the “service of process” requirements are in your state.) The document telling you what you must do (respond/appear) by what date is called a “summons.” The summons is usually accompanied by a copy of the “complaint,” the document that tells you who is suing you, why and for how much. (In some places, the summons and the complaint may be combined into a single document.)

An “answer” is a formal, written statement of your defense to the lawsuit. Depending on the facts of your case, answers might include, but are not limited to, stating that the debt is not yours, contesting the amount the collector says you owe, questioning the collector’s right to sue to collect the debt (perhaps because it is beyond the statute of limitations), or saying that you do not know if the statements in the complaint are true. Answering the lawsuit puts the debt collector in the position of having to produce evidence that proves to the court you owe the debt. There may be other ways of responding to a lawsuit—for example, filing a motion or a counterclaim. A lawyer can explain the legal implications of each type of response and help you determine which one, if any, would be best in your case. (In some cases, it may be to your advantage not to respond, but this strategy is best determined with the guidance of a lawyer.)

If you ignore a court action, there’s a possibility that a “default” judgment will be entered against you for the amount the creditor or debt collector claims you owe. A court also may award the collector additional money to cover its collection and/or legal costs. A judgment gives the debt collector stronger tools to collect the money you owe, such as garnishment of your wages or seizure of money in your bank account. This is one reason why it is so important to speak to an attorney before responding to a lawsuit.

If you dispute the debt or the amount owed, do it before the court makes a judgment. A judgment is a court order, and only the court can change it. It's very difficult to get a judgment changed or set aside once the case is over. While you may have options to have the default judgment “vacated” (voided) for certain reasons, you are much better off avoiding a judgment than trying to fight one after the case has been decided.

Active duty servicemembers have some important added protections against default judgments and garnishments under the Servicemembers Civil Relief Act (SCRA). Learn more at Military.com (bit.ly/2a9oAru) and SaveAndInvest.org (bit.ly/2ad3I67).

If you are sued for a debt, you should consult with an attorney in your state who is experienced in the FDCPA and debt collection issues. A qualified attorney can explain your rights and help you avoid missing a possible defense in your answer. If you qualify, you may be able to get free or low-cost advice and/or representation from a legal aid service (see slide 18 for resources). Servicemembers should consult their local JAG office (1.usa.gov/1tnkq1A).

Some collectors file lawsuits knowing that they don’t have enough evidence to prove the defendant owes the debt. Because relatively few people respond to the notice of a lawsuit—a potentially big mistake—collectors count on winning by default. If you file an answer, it is possible that the collector will attempt to negotiate with you to avoid a lawsuit it can’t prove. If this doesn’t happen, it could be because the collector feels confident that it has the needed proof to win the case, and this may be your last chance to negotiate. Speak to an attorney or credit counselor to weigh your options.

Learn more:

- CFPB’s “What should I do if a creditor or debt collector sues me?": bit.ly/2ad4KiK
- Nolo’s “Creditor Lawsuits: How the Case Begins”: www.nolo.com/legal-encyclopedia/creditor-lawsuits
- Nolo’s book “Represent Yourself in Court”: www.nolo.com/products/represent-yourself-in-court-ryc.html
- Nolo’s article “Defenses and Counterclaims to Credit Lawsuits” (bit.ly/2ad5YtY). (A counterclaim is a claim against the plaintiff—for example, because the debt is for a product that injured you or caused damage or you believe the plaintiff has violated the FDCPA. If the judge sides with you, the case could be dismissed or the judgment might be for an adjusted amount.)

➔SLIDE #14

Go over slide notes.



Slide notes: The summons you receive will tell you where the case will be heard. You and/or your attorney should arrive prepared and on time. Consider getting advice from an attorney to determine exactly what docs to bring. These might include, for example:

- All correspondence you have received from or sent to the collector, including copies of letters, printouts of email messages and notes of all phone conversations, including whether the collector was disrespectful or harassed you with repeated calls;
- Records of who the collector has contacted (your employer, for example) about the debt;

• Any other documentation that supports your case, which might include a credit report, statements, canceled checks or documents that show the debt is too old to sue for (time-barred, or past the statute of limitations), doesn't belong to you, is in the wrong amount, or that demonstrates you have made a good faith effort to repay the debt; and

- Records verifying your income and assets if you are claiming exemption from garnishment.

Depending on your state, if the case is heard in small claims court, you might not be allowed to have an attorney present with you. Learn about your options in Nolo's "If You Get Sued in Small Claims Court" (<http://www.nolo.com/legal-encyclopedia/defendants-small-claims-court-options-29566.html>). If you must defend yourself in small claims court, Nolo's book "Everybody's Guide to Small Claims Court" (<http://www.nolo.com/products/everybodys-guide-to-small-claims-court-nsc.html>) includes information for all 50 states. Nolo's "Represent Yourself in Court" (www.nolo.com/products/represent-yourself-in-court-ryc.html) provides information for representing yourself in civil court.

It is possible that you will have a last-minute opportunity to try to work out a settlement or repayment plan with the collector just before the case is heard. Make sure any agreement is presented "on the record" during the hearing, and that you receive a copy of the agreement. Do not agree to any repayment plan that you aren't sure you can fulfill.

It's also possible, in some places, that the judge in a court case will require non-binding arbitration. In these cases, the arbitrator is assigned by the court or chosen by the two sides. Fees usually are capped and may even be waived if they are unaffordable. In court-ordered arbitration (unlike the "pre-dispute" arbitration required in many credit agreements, covered on the next slide), the arbitrator's decision is non-binding, which means that either side can reject the decision and have the case go back before a judge.

➔SLIDE #15

Go over slide notes.



Slide notes:

Arbitration is a way of resolving disputes in which an entity outside of the court system decides the outcome of a disagreement. There is non-binding arbitration, sometimes ordered by a court (discussed on the previous slide), and there is binding mandatory arbitration that is required under many credit card, loan (but not mortgage) and consumer service agreements. These pre-dispute mandatory arbitration clauses require that any future disputes between the company and a consumer be heard by an arbitrator rather than by a judge in court. The arbitrator's

decision is binding, whether the consumer shows up for the hearings or not.

Whether or not an arbitration clause included in your contract (or “agreement”) with the original creditor or service provider is valid after the debt goes to a debt collector depends on the language in the agreement, and could depend on the relationship between the collector and the original creditor. It is advisable to have an attorney review whether an arbitration clause in your particular credit agreement is void or valid once it is transferred or sold to a collector, or whether it is unenforceable for any other reason. (Mandatory binding arbitration overwhelmingly favors creditors, which is a good reason to try to have the case heard in court.)

If the debt collector takes you to arbitration, you will receive a notice. As with a regular lawsuit, you should not simply ignore the deadlines and requirements outlined in the notice. If you can’t afford the arbitration fee, ask if it is possible to apply for a fee waiver. If the arbitrator’s office is far from you and you can’t afford to travel, ask if there is an option to change the hearing to a conference call or if it can be done through mail or email. Even though you don’t have to have a lawyer in arbitration, you should consult an attorney to protect your rights.

During the arbitration, you and the collector each have a chance to tell your side of the story. If the arbitrator decides you owe the money, it will issue an “award” to the debt collector, who must then take that decision to a court and have the judge confirm it. If the judgment is granted, the court may issue a garnishment order against you to have money taken from your paycheck or bank account. You have the right to “challenge” the collector’s request that the court confirm the judgment against you, or you can go to court and contest the award, but the time frame and your reasons for doing so (arbitrator misconduct such as bias, questioning validity of the claims against you and challenging the legitimacy of the arbitration clause, for example) are limited, so seek the advice of an attorney.

UNDERSTANDING GARNISHMENT (20 minutes)

Learning objective: Be aware of the potential consequences of losing a debt collection lawsuit and understand your rights if you are subject to garnishment.

Key points (slides 16-17):

- A judgment gives the collector stronger tools to collect the debt, including, in some cases, garnishment.
- There are limits on how much of your wages can be garnished for certain types of debts.
- Some income from government benefits is protected from garnishment.
- The same limits and protections don’t apply to certain types of debts, like taxes, student loans and spousal and child support.
- Some portion of your personal possessions and equity in a car and/or home is exempt from seizure to repay a debt.
- You should seek legal advice if your wages and/or bank account is garnished, or if a lien is placed on your home.

Questions to generate discussion:

- Could you make ends meet if your income were garnished? Do you think it’s fair for an employer to fire you if you have two or more garnishments? Why or why not?
- Why do you think the same garnishment limits don’t apply to debts for taxes, student loans, spousal and child support? Do you think that’s reasonable? Why or why not?
- Why do you think there are added protections for government benefits?

➔SLIDE #16

Introduction: Most people would have a difficult time if part of their income or the money in their bank account were taken from them. Yet garnishment is the potential outcome of a debt collection lawsuit. If you can't avoid garnishment, you should take steps to ensure that no more is taken from you than is allowed by law.

Go over slide notes.

If you lose the case

- Judgment
- Garnishment/levy
- Real estate lien
- Arrest?



Slide notes: If the collector wins the case, the court will enter a judgment against you, which states how much you owe. (In the case of arbitration, the collector will take the award to a court and ask it to confirm it.) The collector has a certain number of years to collect—the exact period varies by state, as listed in an excerpt from Nolo's "Everybody's Guide to Small Claims Court" (bit.ly/2aGJdNg). Most states allow creditors to renew the judgment, and some allow them to renew it over and over, essentially making the judgment permanent. An overview is provided in the answer to "How long does a creditor have to collect on a judgment against me?" at the Nolo website (bit.ly/2afyB4).

If you don't pay in full or by negotiating a payment plan, the collector may be able to have money taken from your paycheck or bank account under a garnishment order. The collector may even be able to get a lien against real estate you own. (A lien typically prevents you from selling the property until the underlying debt has been paid and removed, though some property owners may be able to take legal steps to get it removed by, say, claiming the property is exempt, filing bankruptcy or making a request to the court. Learn more about judgment liens at the Nolo website: <http://www.nolo.com/legal-encyclopedia/property-judgment-liens>.)

Under federal law, it is illegal for your employer to fire you because of a garnishment for a single debt. But federal law *doesn't* protect you from being fired if two judgment creditors attach your wages, or if one judgment creditor attaches your wages to pay two different judgments. However, state law might offer additional protections in the case of multiple judgments. (Nolo offers state law resources that may help you determine your protections in the case of multiple judgments: <http://www.nolo.com/legal-research/state-law.html>.) You might be able to avoid getting fired by convincing your employer that you are doing your best to clear up the debt as soon as possible.

Collection agencies don't have the legal authority to issue arrest warrants or have you put in jail. However, if a collector has obtained a judgment against you, a judge could issue a warrant for your arrest if you ignore an order to appear in court or do not pay the legal fees stemming from your case, if any. In a handful of states, debt collectors are allowed to seek arrest warrants for debtors if all other collection methods have failed. (In reality, not all counties in those states enforce debt-related warrants.) To protect yourself, always show up when summoned, and seek assistance from a lawyer.

If you learn of a default judgment against you in a case you were not notified about, you have a strong legal defense to stop any efforts to collect on the judgment. Consult an attorney specializing in debt collection immediately.

➔SLIDE #17

Go over slide notes.

Exemptions



Slide notes: Regardless of the amount of the judgment, the law places limits on what can be taken from you. Under federal law, a creditor can only garnish 25 percent of your net wages (gross wages minus taxes and mandatory deductions) or the amount that exceeds 30 times the federal minimum wage (\$7.25 per hour in 2016), whichever is less. State law may offer even greater protection. For example, in California, the lesser of 25 percent of weekly disposable earnings or 50 percent of the amount by which earnings exceed 40 times the state minimum wage (\$10 per hour in 2016), or local minimum wage, if higher, is subject to levy. Learn more in AllLaw.com’s “How Much of My Wages Can Be Garnished?” (bit.ly/1B27H8q). That page also provides a link to

Nolo’s list of state wage garnishment laws (bit.ly/1siw5Uw).

Income from government benefits (Social Security, VA, SSI, etc.) is further protected. In some cases, it can’t be touched at all, while in other cases it could be garnished to some degree to pay certain types of debts, such as child support, alimony, student loans and delinquent taxes. Whether your government benefits can be garnished and to what extent depends on factors such as the laws of your state, the source of the benefits, how they were deposited, how much of them remains in your account and the type of debt you owe. The FTC offers a fact sheet on “Garnishing Federal Benefits” (bit.ly/FTC_garnishing_federal_benefits), which details not only what types of government benefits are exempt, but also what to do if you receive a notice of garnishment or your account has been frozen. For more information about exemptions, read LawHelp.org’s “Money That Cannot Be Taken From You (“Garnished”) to Pay Off a Debt” (bit.ly/1siwh6j). The Consumer Financial Protection Bureau also offers information on the topic in “Your benefits are protected from garnishment” (bit.ly/2aspx0n) and “Can a debt collector take my Social Security or VA benefits?” (<http://bit.ly/2dyTQFN>). The CFPB also offers a sample letter template you can use to tell a collector that your Social Security or VA benefits are protected from garnishment (files.consumerfinance.gov/f/201505_cfpb-sample-letter-to-debt-collector.doc).

If your bank freezes any money in your account, it must send you a notice of garnishment. Then, a judge decides whether your money should be turned over to the debt collector based on factors such as the source of your income and state law. It is very important for the judge to be aware that the source of your balance is government benefits before a decision is made regarding what should be turned over to the collector. Contact a lawyer or legal aid society for help. If you’re a senior, the Center for Elder Rights Advocacy can refer you to a local agency that provides free legal help to seniors who qualify (866-949-2372 or www.legalhotlines.org). Be aware that even if you are entitled to notification that money in your bank account will be seized, you may not receive the notice in time to avoid bounced-check or non-sufficient funds (NSF) fees on outstanding checks.

Some portion of your personal possessions and equity in a car and/or home is also exempt. Some states limit liens on homes, even if a debt collector has obtained a judgment. If a debt collector is threatening to put a lien on your home, consult an attorney to learn your rights under your state’s laws. Find information about your state’s homestead exemption (the amount of equity in your home that cannot be touched by most creditors) and other exemptions at the LegalConsumer.com website (www.legalconsumer.com/bankruptcy/laws).

Seek legal advice if your wages are garnished or funds are frozen or removed from your bank account, or if a lien is placed on your home.

KNOW YOUR RIGHTS (EXERCISE) (10 minutes)

Assign participants to work on the fill-in-the-blanks exercise on page 26 of the lesson plan. Ask for volunteers to share their answers. (Answer key is on page 27.)

GETTING LEGAL HELP (10 minutes)

Learning objective: Be aware of the various resources that exist to provide free or low-cost legal help to consumers.

Key points (slide 18):

- The advice of an attorney is essential if you have been or may be sued, are facing wage garnishment or seizure of assets, or are considering bankruptcy.
- If you are not able to take advantage of free or low-cost legal services, consider paying for at least an initial consultation with a qualified attorney.
- Some attorneys work *pro bono* (free to you because they expect the other side to lose and pay their fees) or on contingency (they don't get paid unless you win the case).

Questions to generate discussion:

- Do you know anyone who has taken advantage of free or low-cost legal services (legal aid)? Were they happy with the service or advice they received? What was the outcome?
- What do you think might be some potential consequences of not getting qualified legal advice in a debt collection case?

➔SLIDE #18

Introduction: The advice of an attorney can mean the difference between winning and losing a lawsuit. But an attorney's fees are not affordable for everyone. Free and low-cost legal services try to remove the disadvantage of economics by making qualified legal advice available to low-income consumers.

Go over resources on slide per slide notes. (*Note: If you can project your computer screen, visit one or more of the sites to show participants what they will find.*)

Free and low-cost legal help

- Legal Services Corporation
- LawHelp.org
- Center for Elder Rights Advocacy
- Armed Forces Legal Assistance Office
- National Association of Consumer Advocates
- Bar association



- **Slide notes:** Whether you are considering filing bankruptcy or you need advice or representation for a debt collection lawsuit, there are free and low-cost sources of legal help for those who qualify. (While legal aid organizations provide free legal services to low-income people, know that there aren't nearly enough legal aid lawyers to serve everyone, so finding the funds to pay for at least an initial consultation with an experienced debt collection attorney may be a wise course.) The Legal Services Corporation (www.lsc.gov), an independent non-profit established by Congress in 1974 to provide financial support for civil legal aid to low-income Americans, provides referrals to local legal aid offices for those who cannot afford a private attorney.

- LawHelp.org (www.lawhelp.org) provides legal information and helps low- and moderate-income consumers find free legal aid programs in their communities. (The CFPB also offers a list of state legal aid directories [bit.ly/2ataeaL].)
- The Center for Elder Rights Advocacy (www.legalhotlines.org or 866-949-2372) can refer qualifying seniors to a local agency that provides free legal help to seniors who qualify.
- Active duty servicemembers have special rights under the Servicemembers Civil Relief Act (SCRA). If you are in the military and need legal help, contact your Armed Forces Legal Assistance Office (1.usa.gov/1tnkq1A).

- The National Association of Consumer Advocates (NACA) website (www.consumeradvocates.org) allows you to search for a qualified attorney in your area. While these attorneys' services are not necessarily free or low-cost, an attorney might be willing to defend you *pro bono* (free) if he or she believes the collector is breaking state or federal law, because the collector, if it loses the case, would be responsible for paying your attorney's fees.
- If you don't qualify for free or low-cost legal help, you can contact a lawyer referral service such as your state or local bar association (bit.ly/2abJBCC) and ask for an attorney with experience in consumer law, debt collection defense or the Fair Debt Collection Practices Act. Or ask for referrals from people you know, including any good attorney you have hired before. Some attorneys are willing to forgo upfront payment and charge you only if and when you win your case (contingency fee arrangement) because in an FDCPA case, the court has the power to order that the debt collector pay for your attorney's fees if you win.

FILING A COMPLAINT (10 minutes)

Learning objective: Understand where to file a complaint against a debt collector.

Key points (slide 19):

- The best place to start when you have a complaint about a debt collector is the collection company's compliance department.
- If you can't resolve your complaint directly with the collection company, there are multiple complaint-handling entities that you can turn to.
- If the collector has violated your rights, you have the right to sue and you could win damages.
- Just because a collector loses a lawsuit related to its violation of debt collection laws doesn't mean you don't owe the debt if it's proven valid.

Questions to generate discussion:

- Have you ever filed a complaint? What was the outcome? What do you think did or didn't work in your favor?

→ SLIDE #19

Introduction: Each year, debt collection is one of the top categories of consumer complaint. Fortunately, there are a number of complaint-handling agencies where you can report your dissatisfaction with a collector. In some cases, you may even be able to turn a legitimate complaint against a collector who violates the law to your advantage.

Go over resources on slide per slide notes. (*Note: If you can project your computer screen, visit one or more of the sites to show participants what they will find.*)

Filing a complaint

- Debt collection company compliance dept.
- Consumer Financial Protection Bureau (CFPB)
- Federal Trade Commission (FTC)
- Better Business Bureau (BBB)
- State attorney general



Slide notes: If you're having trouble with a debt collector, submit your complaint directly to the company's compliance department. If you are not able to resolve the issue directly with the collection agency, you can file a complaint with:

- The Consumer Financial Protection Bureau (CFPB) (www.consumerfinance.gov/complaint/ or 855-411-CFPB)
- The Federal Trade Commission (FTC) (www.ftccomplaintassistant.gov or 877-FTC-HELP)
- The Better Business Bureau (go.bbb.org/1RgnpWV)
- Your state's attorney general (www.naag.org provides a state directory)

Nolo offers tips in “What to Do If a Bill Collector Crosses the Line” (bit.ly/2a9OcEn). One tip is to send a copy of the FTC/CFPB complaint to the collection agency and the original creditor in hopes of getting them to cancel or negotiate the debt.

If you believe a debt collector has violated the law, you have the right to sue in federal or state court within a year of the date of the violation. If you win, the judge can order the collector to pay your attorney’s fees and maybe even actual damages (such as lost wages or medical expenses). If the debt collector knowingly and purposely violated the law, the court must award you an additional \$100 to \$1,000. However, you will still owe the debt if it is proven valid. Contact the resources on the previous slide to find an attorney who might handle such a case. Learn more by visiting the Nolo webpage on “Damages for FDCPA Violations” (<http://www.nolo.com/legal-encyclopedia/damages-fdcpa-violations.html>).

QUESTIONS AND ANSWERS (10 minutes)

Preparation: Review the *Debtors’ Rights: Protecting yourself from debt collection lawsuits* and *The Fair Debt Collection Practices Act: How it restricts collectors and protects consumers* publications. You might also want to review *When a collector calls: An insider’s guide to responding to debt collectors* (http://www.consumer-action.org/downloads/english/CRC_InsiderGuide.pdf.)

Open the floor to questions.

WRAP-UP AND EVALUATION (5 minutes)

→ SLIDE #20

See page 28 of this lesson plan for the course evaluation form and instructions.



Thank participants for joining you today and ask them to fill out the evaluation form and leave it on a table or in a large envelope you provide. If you will be conducting other trainings at a specific future time, announce that now and encourage everyone to attend.

When a collector calls (exercise)

For each of the following scenarios, identify any red flags (signs that the call could be a scam, the debt might not be legitimate or the collector isn't following FDCPA rules). Then determine how you should respond.

1) The phone rings at 9:30 p.m. The caller immediately states that he is contacting you regarding your past-due tax bill of \$525, which must be paid today if you want to avoid jail. When you question that you owe the debt, the caller reiterates that you will go to jail if you don't pay today by purchasing a prepaid card loaded with the \$525 and providing him with the card access code.

2) You receive a postcard prominently displaying ABC Collection Agency's name on one side and a message on the other side stating you owe a delinquent credit card debt in the amount of \$1,400. You do not doubt that you owe the debt—you had to stop making payments six months ago, when you lost your job—but you're unable to contact the collection agency regarding the debt because there's no address or phone number on the postcard.

3) A collector calls you at work. After confirming that you are the person she is trying to reach, she identifies herself as Marsha Cole of XYZ Collectors and tells you she is contacting you to collect a debt. When you tell her that you won't discuss the debt until you receive written notification, she confirms your mailing address and ends the call. A few days later, you receive the validation notice in the mail. The day after you receive the validation letter, the collector calls you at work again to discuss the debt.

4) A week after receiving your first collection call, you receive a validation notice disclosing the amount of the debt, the name of the creditor and your rights regarding disputing the debt or requesting additional information about it. You immediately call the collector and dispute the debt. He agrees to send you verification. But you receive two more collection calls from him during the following two weeks, despite not having received the debt verification information you were expecting.

5) A collector calls you and claims you owe a debt for an old unpaid deficiency judgment on a repossessed vehicle. You don't doubt that you owe the debt, though you're surprised to hear from a collector after so many years. You ask the collector what the statute of limitations is on the debt, but she refuses to answer.

6) A couple of months after hearing from a debt collector and receiving the validation notice in the mail, you send a letter to the collector disputing that you owe the debt. Rather than send you verification that you owe it, the collector continues to contact you at home and at work asking for payment.

7) You receive a call from someone saying that they are trying to contact Jordan Jones regarding a \$750 debt for an unpaid medical bill. You are Jordan Jones, but you question that you owe the debt. The collector agrees that he might have the wrong Jordan Jones and asks you to provide your address, birthdate and Social Security number so that he can determine if you are the correct person. You give him the information and, as you expected, he confirms that he has the wrong person and hangs up.

Answer key: When a collector calls

- 1) Under the law (FDCPA), collectors are not allowed to call after 9:00 p.m. unless you've given them permission, and they must identify themselves when they reach you. They aren't allowed to threaten you with jail (or violence, property damage, arrest, harm to your reputation, etc.), either. In addition to breaking at least three debt collection rules, the fact that the collector specifically requested that you pay via a prepaid card should send up a red flag, as that is a common ploy of scammers.
- 2) The fact that you stopped making payments on a debt six months ago makes it reasonable to believe that the debt has been transferred or sold to a debt collector (though you should still do your due diligence to have it verified). However, it's a violation of the FDCPA to send a postcard or letter that indicates to anyone who sees it that a debt is being collected from you. Also, every written collection attempt must contain the name, address and phone number of the collection agency.
- 3) The collector has not done anything to violate the FDCPA. She is within her rights to call you at work unless and until you tell her you are not able to receive calls there. She identified herself and made clear that the purpose of her call was to collect a debt. She is allowed to continue to call you unless you dispute the debt or request verification or information about the original creditor within 30 days of receiving the validation notice. (She can begin calling you again after responding to your request unless you ask in writing that she stop.)
- 4) If you had disputed the debt in writing, the collector would have been violating the FDCPA by continuing to contact you before responding with verification. But because you did so orally, he can continue to contact you, and isn't legally obligated to send you verification of the debt. While you can dispute a debt at any time, you must do so **in writing** within 30 days of receiving the validation notice in order to retain certain rights.
- 5) The fact that you know the debt is old should make you question whether the statute of limitations may have run out. If you think the debt might be time-barred, ask the collector if the debt is beyond the statute of limitations. Some collectors may decline to answer, but if you do get an answer, it must be truthful. You can also send a response to the validation notice asking for verification of the debt, including the date of the last payment. This is important because it helps determine when the statute of limitations clock started ticking. It's against the law for a collector to sue you or threaten to sue you on a time-barred debt. If you think a collector has broken the law, file a complaint with the FTC and your state attorney general, and consider talking to an attorney about bringing your own private action against the collector for violating the FDCPA.
- 6) Because you missed the 30-day deadline for getting verification or information about the original creditor, the collector is within his/her rights to continue contacting you despite your dispute. However, you still have the right, even after 30 days, to request that the collector stop contacting you at home (request must be made in writing) or at work (request may be made orally or in writing). While that might sound like a good idea, if you owe a legitimate debt that is not time-barred, you have to consider the possibility that the inability to communicate with you directly will push the collector to file a lawsuit (or force you to enter binding arbitration, depending on your contract with the creditor).
- 7) While you might be momentarily relieved to find that the debt collector had the wrong number, you should be very concerned that you just gave a potential scammer your address, birthdate and Social Security number—information that could be used to steal your identity, access your accounts and/or open new accounts in your name. You should never give sensitive information to an unknown caller. In this case, you should have told the caller that you believe he has the wrong person and that he should send a collection letter to the address on record, and you will respond if and when you receive it and determine that it's legitimate.

Know your rights (exercise)

Fill in the blanks from the choices at the bottom of the page to complete the following statements.

- 1) The main federal law that governs how collectors can do business and prohibits them from using abusive, deceptive or unfair practices to collect money is the _____.
- 2) Within five days of first contacting you, the collector must send you a _____, which contains information about the debt, the name of the creditor and your consumer rights.
- 3) To retain certain rights, you must dispute the debt or request verification and/or the name and address of the original creditor in writing within _____ days of receiving the validation notice.
- 4) The _____ is the deadline for legal action on different types of debt—once the collector misses it, it no longer has the right to sue you for payment.
- 5) You have the right to get your _____ for free every 12 months.
- 6) If a debt collector sues you, it must notify you in writing in the _____, which tells you what you must do and by what date, and the _____, which tells you who is suing you, why and for how much.
- 7) If you ignore a court action, it's likely that a _____ will be entered against you for the amount the creditor or debt collector claims you owe.
- 8) _____ is a way of resolving disputes in which an entity outside of the court system decides the outcome of a disagreement and you cannot appeal the decision.
- 9) Being _____ means that you have no income that could be garnished or assets that could be seized even if the court awarded the collector a judgment against you.
- 10) A judgment may allow the debt collector to collect the money you owe by _____ your wages or bank account balance.
- 11) Under federal law, a creditor can only garnish _____ of your net wages (gross wages minus taxes and mandatory deductions) or the amount that exceeds 30 times the federal minimum wage.
- 12) Under federal law, it is illegal for your employer to _____ because of a garnishment for a single debt.
- 13) Active duty servicemembers have some important added protections against default judgments and garnishments under the _____.
- 14) If your debt is too large to pay and you don't see any way out, _____ could be an option to consider—either before or after you are sued—in order to stop collection efforts and maybe eliminate some or all of your debts.
- 15) If you believe a debt collector has violated the FDCPA, you have the right to sue in federal or state court within _____ of the date of the violation.

| | | | | |
|---------------------|-------------------|------------------------|---------------------|---------------------|
| 30 | summons/complaint | judgment-proof | a validation notice | default judgment |
| fire you | 25% | collaboration | SCRA | 50% |
| bankruptcy | FDCPA | statute of limitations | 20 | verification notice |
| binding arbitration | six months | one year | garnishing | credit reports |

Answer key: Know your rights

1. Fair Debt Collection Practices Act (FDCPA)
2. a validation notice
3. 30
4. statute of limitations
5. credit reports
6. summons/complaint
7. default judgment
8. binding arbitration
9. judgment-proof
10. garnishing
11. 25%
12. fire you
13. Servicemembers Civil Relief Act (SCRA)
14. bankruptcy
15. one year

**Training evaluation:
Debt collection: Know your rights**

Please help us improve future presentations by giving us your opinion of today's class.
Circle the response that best reflects your feelings about each statement.

1. I have a better understanding of my rights if I am contacted by a collector.

Strongly agree Agree Disagree Strongly disagree

2. I feel better prepared to avoid a debt collection scam.

Strongly agree Agree Disagree Strongly disagree

3. I have a greater awareness of the general debt collection legal process and how to protect myself if I am sued.

Strongly agree Agree Disagree Strongly disagree

4. I have a better understanding of what garnishment is and the rights I have to protect my income, assets and employment.

Strongly agree Agree Disagree Strongly disagree

5. I know where to submit debt collection complaints, find legal advice and get other types of assistance and information.

Strongly agree Agree Disagree Strongly disagree

6. The instructor was well informed.

Strongly agree Agree Disagree Strongly disagree

7. The materials I received are easy to read and understand.

Strongly agree Agree Disagree Strongly disagree

8. I would like to attend another class like this.

Strongly agree Agree Disagree Strongly disagree

On a scale of 1 to 10 (10 being the best), how would you rate the training? _____

Please let us know how we could improve future trainings (use back, if necessary):

Thank you for attending!