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Unpacking the Increasingly Popular Fair Credit Billing Act

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The Fair Credit Billing Act is not nearly as well-known to creditors and their counsel as its "fair credit" brother, the Fair Credit Reporting Act. But the FCBA is becoming increasingly popular among litigants — often pro se litigants or litigants bringing claims in arbitration.

The statute is particularly attractive to plaintiffs because the FCBA focuses on the procedure a creditor follows when reviewing a billing dispute. It is also getting increasing attention from regulators.

For example, on May 22, the Consumer Financial Protection Bureau issued an interpretative rule that applied certain aspects of the FCBA to financial institutions in the buy-now, pay-later industry. Because the failure to follow the FCBA procedures can lead to potential civil liability — and given regulators' increasing attention to the statute — creditors need to familiarize themselves with the FCBA's procedural requirements.

What is the FCBA?

The FCBA stems from a 1974 amendment to the Truth in Lending Act.[1] The FCBA was designed to provide consumers with a mechanism to dispute accounting issues with their credit card companies. Specifically, the act governs billing errors on open-ended credit accounts, typically credit cards.

"Billing errors" generally involve disputes related to an incorrect charge on an account, unauthorized charges on the account, the failure of a creditor to correctly apply credits or payments on an account, payment computation errors, or any other error that the CFPB may enumerate.[2] Importantly, the quality of goods the consumer obtained through the use of credit is not a valid billing dispute.

How does the FCBA work?

The FCBA is a procedural statute that creates steps a creditor should follow when investigating a consumer's billing dispute. The FCBA is less concerned with the actual accuracy of a credit card statement than it is with procedure. This includes a procedure the consumer must follow when lodging a dispute and the procedures the creditor should follow when conducting an investigation.

On the consumer side of an FCBA dispute, a valid dispute only occurs when a consumer sends a written dispute to a creditor at the address designated for billing disputes. Creditors typically provide information on how to lodge a billing dispute on the initial credit card terms and conditions or on a consumer's monthly statements.[3]

The FCBA requires a consumer to send the written dispute to the creditor within 60 days of the date the creditor sent the first monthly billing statement containing the error.

The letter to the creditor must include the consumer's name and account number along with an explanation of what the consumer believes is wrong on the statement. The consumer must explain what the billing error is, why the consumer thinks the bill is incorrect, and the amount of the billing error.[4]

During the dispute, the consumer can withhold payment of the disputed amount and any related fees; however, the consumer must still pay all other charges and undisputed amounts.

Meanwhile, a creditor has 30 days to send the consumer written acknowledgment of the dispute.[5] During the dispute, the creditor should not collect on a disputed charge. Creditors should also avoid reporting the relevant account as delinquent for failure to pay a disputed charge.

A creditor has a maximum of 90 days to investigate a dispute.[6] During this time, the creditor may also reach out to the consumer for additional information as needed to complete its investigation. Upon finishing its investigation, the creditor must send the consumer a written explanation of its findings.

After receiving the creditor's findings, the consumer can dispute the outcome of the creditor's investigation within 10 days. However, assuming the creditor has followed the FCBA processes above, the creditor can start reporting the disputed charge on the account tradeline to the consumer reporting agencies and begin collections on the charge.

In particular, if the consumer continues to assert the same dispute with respect to the alleged billing error, the creditor has no further obligation with respect to the disputed charge.[7]

The FCBA focuses on the mechanics of a dispute, rather than the substance of the billing error. This means that even if a creditor's investigation fails to correct an actual billing error, a consumer's remedy will be severely limited if the creditor complied procedurally with the FCBA.

In litigation for a violation of the FCBA, however, consumers can recover actual damages as well as statutory damages equal to twice the amount of any finance charge in connection with the disputed transaction and "the costs of the action, together with a reasonable attorney's fee as determined by the court."[8]

When do FCBA claims arise?

FCBA claims are increasing in popularity from both pro se litigants and represented plaintiffs, with FCBA claims often paired with FCRA claims. Given the existence of arbitration clauses in many credit card agreements, many FCBA claims often appear in arbitration.

Litigants often bring FCBA and FCRA claims together because they frequently go hand in hand. A consumer will lodge a credit billing dispute directly with the credit card company, while also lodging a dispute with a consumer reporting agency regarding the credit reporting on the account.

For example, a litigant may assert FCBA claims against a creditor related to the investigation of supposedly fraudulent charges on an account, while simultaneously asserting claims against the furnisher for its investigation of the credit reporting related to the alleged fraudulent transactions.

Given the increasing prevalence of online shopping and the associated increase of online fraudulent activity, certain litigants may see the FCBA as a way to combat charges that they either disagree with or, in some contexts, just do not want to pay.

What should a creditor do if it receives an FCBA lawsuit?

First, once a creditor receives an FCBA claim, it should check the original date of the consumer's dispute and the date of the original charge on the account. The FCBA claim may be time-barred by either: (1) the relatively short one-year statute of limitations; or (2) the statute's 60-day time limit on billing disputes.

Second, creditors should examine where the dispute was sent, how the dispute was sent (written or verbal), what the consumer stated in the dispute, and whether the charge disputed constitutes a billing error under the FCBA. If the consumer fails to comply with the procedural requirements, the consumer may not have a claim.

For example, if a consumer calls a creditor and is unhappy with a pair of shoes he bought with a credit card, that will not create a viable claim. A consumer cannot dispute a charge merely because the consumer is unhappy with the goods he purchased. That is not an actionable billing error.

Additionally, in the scenario above, the consumer only called the creditor instead of sending a written dispute. This would also not trigger an FCBA claim.

Third, a creditor should examine whether the dispute is ongoing. If so, the creditor should send a written acknowledgment of the dispute and continue actively investigating the dispute until resolution of the charge.

In sum, both pro se and represented litigants are increasingly relying on the FCBA to bring claims against creditors. Sometimes these claims are focused on money. But often these claims are backdoor efforts for a consumer to fix their credit through litigation pressure.

Creditors should become familiar with the procedural requirements of the FCBA. Otherwise, like many federal statutes, it can become a trap for the unwary.

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[1] 15 U.S.C. 1666 et seq.

[2] 15 U.S.C. 1666(b).

[3] 15 U.S.C. § 1666(a).

[4] 15 U.S.C. § 1666(a)(1)-(3).

[5] 15 U.S.C. § 1666(a)(A).

[6] 15 U.S.C. § 1666(a)(B).

[7] 15 U.S.C. § 1666(a).

[8] 15 U.S.C. §§ 1640(a)(1)-(2)(A)(i), (a)(3).

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