

Issues in Consumer Credit



Topics Overview

- Deceptive solicitations and mandated disclosures
- Credit reporting
- Discrimination in lending
- Billing errors
- Predatory Lending
- Debt collection

FTC Jurisdiction

- The FTC is the only U.S. federal agency with both consumer protection and competition jurisdiction in broad sectors of the economy
- With certain exceptions, the FTC has jurisdiction over nearly every economic sector

Companies Under FTC Jurisdiction

- Non-bank financial companies
 - Mortgage companies
 - Mortgage brokers
 - Finance companies
 - Units of bank holding companies

Limits of FTC Jurisdiction

- Certain entities are wholly or partly exempt. Examples:
 - Common Carriers
 - Banks
 - Credit Unions
 - Insurance Companies
 - Nonprofits

Deceptive Credit Advertising

- An advertisement is deceptive if it
 - contains a representation or omission of information
 - that would be material to consumers
 - and that would mislead consumers acting reasonably under the circumstances

Deceptive Credit Advertising

- Materiality is presumed if the claim
 - is intentional
 - significantly involves areas with which reasonable consumers would be concerned
 - pertains to the central characteristics of the product

Deceptive Credit Advertising

- The FTC need not demonstrate actual reliance or consumer injury to establish a violation
- Conduct is deceptive even if it only has a *tendency* or *capacity* to deceive a significant minority
- Thus “half-truths” can be deceptive

Credit Scams



Case Study: Advance Fee Fraud

- Telemarketers or advertisements promise a credit card in exchange for the payment of an up-front fee
- Marketing frequently targeted to people with poor credit history
- No credit card is ever delivered, or the “credit card” is a worthless “shoppers card”

Case Study: Advance Fee Fraud (2)

- "Anyone Can Qualify For A Major Credit Card" – may be a secured credit card
 - Secured credit card requires a consumer to open and maintain a savings account as security for the line of credit
 - Credit limit will be a percentage of the deposit – typically from 50 to 100 percent
 - Ads frequently fail to mention annual fees, security deposits, application and processing fees, higher-than-average interest rates, or income and age requirements

Case Study: Chase Financial Funding

- *To:*
- *Subject:* 3.5% fixed payment 30 year loan
- *From:* "customerservice@chaseff.com" <customerservice@chaseff.com>
- *Date:* Tue, 3 Sep 2002 19:53:26

Title: 3

3.5% FIXED PAYMENT 30 YEARS

Lenders make you wait...They Demand to Interview you...
They Intimidate you...They Humiliate you...
And All of That is While They Decide If They Even Want to
Do Business With You...

**We Turn the Tables on Them...
Now, You're In Charge**

Just Fill Out Our Simple Form and They Will Have to Compete For Your Business...

<http://www.1strefinance.com/apply.htm>

We have hundreds of loan programs, including:

Purchase Loans
Refinance
Debt Consolidation
Home Improvement
Second Mortgages
No Income Verification

Complaint Ex. 2

-15-



COMBINE 1ST AND 2ND
125% DEBT CONSOLIDATION
FHA,VA,JUMBO
NO EQUITY!OK BK!OK

Tuesday, January 14, 2003

Dear

We are pleased to inform you that your property at _____ is pre-approved for the following.

Low 3.5% FIXED PAYMENT based on your loan/s \$156,600

If you are paying more than the new payment specified below on your mortgage and even if you have poor credit, please call Chase Financial at 866-562-6386 to speak to one of our expert and courteous representatives.
expires 2/13/2003 9:44:52 AM

NEW LOAN PAYMENT without credit card debt

Existing Payment	\$1,044
New Payment	<u>\$705</u>
Monthly Cash Savings:	\$339
Annual Cash Savings:	\$4,072

NEW LOAN PAYMENT with credit card debt

Existing Payment with \$35,000 credit card debt	\$2,044
New Payment	<u>\$873</u>
Monthly Cash Savings:	\$1,171
Annual Cash Savings:	\$14,049

*Please call today (Toll Free) for a Free Loan Analysis! Se Habla Espanol!
Monday - Thursday 9 am to 9 pm, Friday 9 am to 5 pm, Saturday 10 am to 2 pm Pacific standard time*

(866)562-6386

(866) LOAN FUND

Sincerely,
Rudy Jones

Apply online www.chaseff.com

Chase Financial Funding, is a licensed broker with the California Department of Real Estate under #01226442. Chase Financial is a DBA of Chase Financial Funding Inc. Loans are subject to equity requirements and lender approval. Rate and terms are subject to change without notice. Interest rate is based off the C.O.F.I index and is principle deferred, APR of 5.274%. 23181 Verdugo Dr. Suite 103B • Laguna Hills, CA 92653 • OFFICE (949) 829-9934 • (866) 562-6386 • Fax (949) 829-9936



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APR of 5.274%

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Office Depot®

Low Prices every day.

Save \$750

1799⁹⁷ Computer, Monitor & Printer

- 400⁰⁰ Internet Mail-In Rebate††

- 200⁰⁰ Price Reduction

- 150⁰⁰ Package Mail-in Rebates

1049⁹⁷ After Rebates & \$200 Price Reduction

COMPAQ

5716 COMPUTER WITH INTEL

PENTIUM III PROCESSOR 450 MHz

[A fine print disclosure at the bottom of this newspaper ad states:]

"Save \$400 On Any Computer! (When You Sign Up For An Internet Usage Subscription††)

†† CompuServe \$400 Internet Mail-In Rebate offer is subject to credit approval and your acceptance of Compu-Serve Terms of Service. Access to CompuServe may be limited especially during peak times. Premium services carry surcharges, and communication surcharges may apply to Arkansas and outside the U.S. You may incur telephone charges depending on your calling plan and location. Offer also requires (1) the purchase of a qualifying eMachine PC, any qualifying HP Pavilion 4500 or 8500 series PC (excluding Model 4530), any qualifying Compaq PC AND Compaq monitor, any qualifying Compaq notebook computer or any IBM Thinkpad, (2) a contract commitment to a 3-year/36-month subscription for CompuServe 2000 Internet Service at a monthly rate of \$21.95, (3) a completed mail-in rebate form, (4) a purchase receipt, and (5) a major credit card. All of the above must be completed and received by CompuServe within 30 days of purchase. Consumers without a valid credit card may pre-pay for 36 months at \$21.95 per month. Within 45 days of credit approval, the \$400 CompuServe Internet Service rebate will be credited to your designated credit card or fulfilled by check sent to the name and address provided on the credit application. Early termination of the 3-year CompuServe 2000 Internet Service requires repayment of the \$400 rebate plus a \$50 cancellation fee. IBM Thinkpad/ CompuServe \$400 Internet Rebate offer expires 9/30/99. HP/CompuServe \$400 Internet Rebate offer expires 9/30/99. Compaq/ CompuServe \$400 Internet Rebate offer expires 9/30/99. eMachine CompuServe \$400 Internet Rebate offer expires 10/31/99. Age 18 or older. Limit one per household or business. See store for details. CompuServe provides various pricing plans, some of which may be lower than the \$21.95 monthly rate required for this promotion. CompuServe is a trademark of CompuServe Interactive Services Inc."

The Use of Disclaimers

- In order to be effective, any disclaimer must be **CLEAR** and **CONSPICUOUS**

The Use of Disclaimers

- **PROMINENCE:** Is it big enough for consumers to notice and read?
- **PRESENTATION:** Is wording and format easy for consumers to understand?
- **PLACEMENT:** Is it where consumers will look?
- **PROXIMITY:** Is it near the claim it qualifies?

Required Disclosures

- Several statutes and regulations *require* certain disclosures.
- E.g., Truth in Lending Act, Consumer Leasing Act, Financial Privacy Rule.
- Goal is to make sure that consumers make informed choices.

Example: Truth in Lending Act

- In any advertisement for closed-end credit, if you include certain “triggering” information, you must also include:
 - the amount or percentage of the down-payment
 - the terms of repayment; and
 - the annual percentage rate of interest, with a description of any possible increase

Credit Reporting

- In the U.S., credit bureaus collect information on individual consumers from various sources and provide that information to potential creditors and others with a right to know
- Credit bureaus are private companies
- By the end of the 1980s, three credit reporting companies dominated the U.S. market
 - Equifax, Experian, and TransUnion

Credit Reporting

What is in a credit file?

- Identifying information
 - Name, addresses, date of birth, Social Security Number
- Credit account information
 - Mortgages, car loans, credit cards
 - Repayment history
- Public records
 - Bankruptcies, foreclosures, civil judgments, tax liens
- Referrals to collection agencies
- Inquiries

Credit Reporting

Who provides information to the credit bureau?

- Creditors, lenders, or others with information
 - Information is provided to credit bureaus voluntarily
 - The credit bureaus maintain files on over 200 million U.S. consumers
 - Four and a half billion pieces of information are entered monthly into credit records

Credit Reporting

Who uses the information?

- Potential creditors
 - Information is used to determine creditworthiness
- Employers
 - Information is used to determine suitability for employment
- Insurance companies
 - Information is used to determine eligibility for insurance

Fair Credit Reporting Act

- Enacted in 1970 because:
 - Lack of restrictions on who could obtain credit reports
 - Inability of consumers to challenge errors because they often did not know credit files existed or who had them
 - Growing concerns about the reports' accuracy and the harm inaccurate information might have for consumers

Fair Credit Reporting Act

“The Congress makes the following findings:

(1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system. . . .”

15 U.S.C. § 1681(a).

Fair Credit Reporting Act

- Market (rather than government) determines what information is collected and used
 - No legal requirements on what information may or may not be collected
 - Consumer consent not required to report information
- If information is collected and used to evaluate consumers for credit, insurance, employment, or other services, then FCRA applies (and those that collect, provide, and use data have certain obligations)

Fair Credit Reporting Act

Guiding Principles:

- Privacy
 - Limited access to credit reports
- Accuracy
 - Responsibilities of credit bureaus and creditors
 - Consumer dispute process
- Fairness
 - Adverse action notices
 - Obsolete information deleted

Fair Credit Reporting Act

PRIVACY

- Requestor must have “permissible purpose” to obtain a credit report
- Credit bureaus must have procedures to make sure that they distribute credit reports only to those with a permissible purpose
- Examples of permissible purposes:
 - Extension of credit
 - Collection or review of credit account
 - Insurance underwriting
 - Employment
 - Only with written permission of consumer

Fair Credit Reporting Act

ACCURACY

- Credit bureaus must “follow reasonable procedures to assure maximum possible accuracy”
- Creditor cannot provide to credit bureaus any information that it “knows or has reasonable cause to believe is inaccurate”
- Consumers have a right to know what is in their credit report and to dispute inaccurate or incomplete information

Fair Credit Reporting Act

ACCURACY

- When a consumer notifies credit bureau of dispute
 - Credit bureau must send dispute to creditor
 - Creditor must investigate dispute and report back to credit bureau
 - Credit bureau must notify consumer of results
- If no changes to credit report, consumer has a right to file a dispute statement

Fair Credit Reporting Act

FAIRNESS

- Consumers have right to know if a credit report was used to deny credit or take other “adverse action”
- In the case of adverse action, the consumer has the right to obtain a free copy of her credit report
- The consumer also has the right to know who has obtained copies of her credit report
- Consumer is entitled to a free copy of her report annually

Fair Credit Reporting Act

FAIRNESS

- Credit bureaus must delete obsolete information typically after 7 years
- Exceptions:
 - Bankruptcies: 10 years
 - Unpaid judgments: 10 years
 - Criminal convictions: no limit

Fair Credit Reporting Act

ENFORCEMENT

- FTC and federal banking regulators
- State attorneys general
- Consumers
 - private right of action in some cases
- Criminal penalties

CREDIT SCORING

- Creditors use credit scoring systems to determine if you would be a good risk for credit or the terms of credit – they consider:
 - Do you pay on time?
 - Are you at your credit limits?
 - How long have you had credit?
 - Have you applied for new credit lately?
 - Do you have too much credit?

Fair Credit Reporting Act

- Gives you the right to get your credit score from the national consumer reporting companies
- They are allowed to charge a reasonable fee
- Often they will give you information on how you can improve your credit score

CASE STUDY: CREDIT REPAIR

**Credit problems? No problem!
We can erase your bad credit-
100% guaranteed.**

**Create a new credit identity — legally.
We can remove bankruptcies, judgments,
liens, and bad loans from your credit
file forever!**

CASE STUDY: CREDIT REPAIR (2)

- These statements are lies
- Only time, a conscientious effort, and a plan for repaying your debt will improve a credit report in the U.S.
- Could involve criminal behavior

CREDIT REPAIR ORGANIZATIONS ACT

- Must give you a copy of the "Consumer Credit File Rights Under State and Federal Law" before you sign a contract
- Must tell you total cost, describe services, how long it will take, describe guarantees
- Cannot charge you until they have completed the promised services

EQUAL CREDIT OPPORTUNITY ACT

- Prohibits consideration of:
 - Sex
 - Marital status
 - Race
 - National origin
 - Religion
 - Age, unless:
 - Too young to sign contract
 - Age over 62 is used favorably by creditor
 - Imminent retirement will lower income

EQUAL CREDIT OPPORTUNITY ACT

- Sources of income that must be considered:
 - Public assistance
 - Alimony and child support
 - Part-time income
 - Pension, annuity, retirement benefits
 - 100% of salary, regardless of sex of wage earner

EQUAL CREDIT OPPORTUNITY ACT

- Rights
 - Have credit in your own name
 - Know whether your application was accepted or rejected
 - Know why your application was rejected or you were offered less favorable terms
 - Get credit without co-signer if you meet creditor's standards

EQUAL CREDIT OPPORTUNITY ACT

- Typical problems
 - Credit reported only in husband's name
 - Older people who have always paid cash
 - Creditor tries to close joint account when one spouse dies

FAIR CREDIT BILLING ACT

Account Number			Statement Closing Date		Current Amount Due
1234-567-890			01-31-01		\$278.50

Check here if address or telephone number has changed. Please note changes on reverse side.

EA BANK
 MAIL PAYMENT TO :
 EA BANK
 132 VINE STREET
 ANYTOWN, USA 67800-0010

JOE EMPLOYEE
 456 SKYVIEW DRIVE
 HOMETOWN, USA 99900-1234
 672919345 0017825500000003

Detach here and return upper portion with check or money order. Do not staple or fold.

Statement of Personal Credit Card Account
 Retain this portion for your files.

EA BANK

Cardmember Name	Account Number	Statement Closing Date
JOE EMPLOYEE	1234-456-890	01-31-01

Statement Date:	02-01-01	Payment Due Date:	03-01-01
Closing Date:	01-31-01		
Credit Limit	\$1,500.00	Credit Available:	\$1221.50
New Balance:	\$278.50	Minimum Payment Due:	\$20.00

Account Summary			
Previous Balance:	+74.24	Transaction Fees:	+3.00
Purchases:	+250.50	Annual Fees:	+25.00
Cash Advances:	+0	Current Amount Due:	+250.50
Payments:	-74.25	Amount Past Due:	+0
Finance Charge:	+0	Amount Over Credit Line:	+0
Late Charge:	+0	NEW BALANCE:	\$278.50

Reference Number	Sold	Posted	Activity Since Last Statement	Amount
43210987	01-03	01-13	Payment, Thank You	-\$74.25
01234567	01-12	01-13	Wings 'N' Things Anytown, USA	\$25.25
78901234	01-14	01-17	Record Release Anytown, USA	\$40.00
45678901	01-14	01-17	Sports Stadium Anytown, USA	\$75.25
3210987	01-22	01-23	Tie Tack Anytown, USA	\$20.75
76543210	01-29	01-30	Electronic World Anytown, USA	\$89.25
2345678		01-30	Transaction Fees	\$3.00
34567890		01-01	Annual Fee	\$25.00

PAGE 1 OF 1

Rate Summary

Finance Charge Summary	Purchases	Advances
Periodic Rate	20.45%	20.45%
Annual Percentage Rate	19.80%	19.80%

For account information and customer service, please call 1-800-555-5555
 Payments or credits received after closing date above will appear on next month's statement

FAIR CREDIT BILLING ACT

- Applies to:
 - Open-ended credit accounts
 - Credit cards
 - Department store cards

FAIR CREDIT BILLING ACT: DISPUTES

- Unauthorized charges
- Charges listing wrong date or amount
- Charges for goods and services you didn't accept or that weren't delivered as agreed
- Math errors
- Failure to post payments or other credits, such as returns
- Failure to send bills to proper address, after notification
- Charges for which you ask for written proof

FAIR CREDIT BILLING ACT

- Dispute must be received by creditor within 60 days of bill
- Creditor must resolve dispute no later than 90 days after receipt
- Account holder may withhold payment pending resolution
- Creditor may not attempt to collect pending resolution

FAIR CREDIT BILLING ACT

- Disputes about quality of goods or services are NOT billing errors, BUT:
 - You have the same rights against the credit card issuer as you have against the seller IF:
 - The goods or services cost more than \$50 AND
 - You made the purchase in your home state or within 100 miles of your billing address AND
 - You have first made a good-faith effort to resolve the dispute with the seller

PREDATORY LENDING



PREDATORY LENDING

- Subprime lending
 - Credit given to higher-risk borrowers
 - May serve previously underserved populations
 - Practices:

PREDATORY LENDING PRACTICES

- May exploit lower-income and minority borrowers
- May take advantage of consumers in weakest bargaining position
- Home loans are complicated and often confusing to consumers
- Hide essential information from consumers
- Pre-payment penalties may inhibit borrower's ability to go elsewhere

PREDATORY LENDING PRACTICES (2)

- Aim to extract excessive fees and costs AND/OR obtain equity in home
 - Equity stripping
 - “Packing”
 - “Flipping”
 - Home-improvement contractors working as agents of lenders

WHAT ARE THESE PRACTICES?

PREDATORY LENDING PRACTICES: Equity Stripping

- Loan to person who cannot repay
(designed to fail)
- Creditor takes equity in house

PREDATORY LENDING PRACTICES: “Packing”

- Adding extras to loan, such as credit insurance, to increase lender’s profits
- Automatically included, no prior notice, borrower rushed through paperwork
- May not be included as part of finance charge and interest rate computation, contrary to law

PREDATORY LENDING PRACTICES: “Flipping”

- Inducing a consumer to refinance a loan repeatedly, within short period of time, incurring many fees, causing debt to increase steadily
- Terms and ultimate benefits of transaction are misrepresented
- Debtor may not be able to afford increase payments

PREDATORY LENDING PRACTICES: Contractors

- Misrepresent cost of loan until after work as begun
- Borrower feels pressured to sign loan papers to complete work
- Targets home-owners with no mortgages or affordable mortgages

PREDATORY LENDING: POSSIBLE REQUIREMENTS TO CONSIDER

- Prohibit the financing of single-premium credit insurance and other loan extras
 - The insurance could be sold on a cash basis with premiums paid periodically over the course of the loan
 - Require that each billing statement disclose the cost of credit insurance, and that the insurance is optional and can be canceled at any time
- Ban mandatory arbitration agreements

PREDATORY LENDING: POSSIBLE REQUIREMENTS TO CONSIDER

- Prohibit asset-based lending, where borrower's ability to repay loan is not considered
- Require creditors to document information considered in determining ability to repay
- Prohibit creditors from representing falsely or without substantiation that a loan will save the consumer money
- Require disclosure of prepayment penalty terms

Debt Collection

- In the past, debt collectors have used some rather extreme tactics
 - E.g., debtors' prison, public shaming, harassment, threatening physical harm or criminal prosecution
- Currently, the FTC receives more complaints about the debt collection industry than any other specific industry
- In 1978, Congress enacted the Fair Debt Collection Practices Act to reign in egregious behavior

Fair Debt Collection Practices Act

“There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.”

15 U.S.C. § 1692

Fair Debt Collection Practices Act

- In general, the FDCPA applies only to third-party collectors, not creditors
 - Unlike creditors, who generally are restrained by the desire to protect their good will when collecting past due accounts, independent third-party collectors are likely to have no future contact with the consumer and often are unconcerned with the consumer's opinion of them

Fair Debt Collection Practices Act

- Personal, household, and family debts are covered
 - E.g., credit card debt, mortgages, medical bills, car payments
- “Debt collector” is any person who regularly collects debts owed to others, including attorneys
- FDCPA prohibits certain conduct and requires certain conduct on the part of debt collectors

Fair Debt Collection Practices Act

– Examples of Required Conduct

- In any communication, must identify themselves and notify the consumer that the purpose of the communication is debt collection
- Within 5 days of initial contact, must provide the consumer with written notice containing:
 - (1) the amount of the debt
 - (2) the name of the creditor
 - (3) notice that the consumer has 30 days to dispute the debt
 - (4) notice that the debt collector will provide verification of the debt upon request
 - (5) notice that the debt collector will provide the name and address of the original creditor upon request
- If consumer disputes the debt, collection efforts must stop until the collector provides verification of the debt

Fair Debt Collection Practices Act – Examples of Prohibited Conduct

- Misrepresentation or Deceit
 - Falsely claiming or implying that the collector is law enforcement, a credit bureau, or an attorney
 - Threatening legal action, attachment, garnishment, etc., when none is contemplated or legally permitted

Fair Debt Collection Practices Act

– Examples of Prohibited Conduct

■ Harassment

- Calling before 8:00 am or after 9:00 pm local time
- Calling repeatedly or continuously with intent to annoy, abuse, or harass
- Using abusive or profane language
- Contacting consumer at work after being told to stop
- Contacting consumer after being told in writing to stop all communications
 - Collector may still contact consumer to let her know what action may be taken

Fair Debt Collection Practices Act

– Examples of Prohibited Conduct

- Violating a Consumer's Privacy
 - Revealing or discussing the nature of the debt with a third party
 - Publishing the consumer's name to a "bad debt list"
 - Information may be reported to credit bureaus, but must be accurate
 - Contacting the consumer via embarrassing media
 - E.g., post card, envelope stamped on outside with "PAST DUE NOTICE"
 - Contacting the consumer when the consumer is represented by an attorney

Fair Debt Collection Practices Act

ENFORCEMENT

- FTC and other federal agencies
- Consumers
 - Statutory damages of at least \$1,000 per violation available, plus attorneys fees
 - Strict liability, unless collector demonstrates “bona fide error”
- Most states have similar laws