
FCRA Focus: The Fair Credit Billing Act: Key Insights and Practical Tips**Host: Dave Gettings****Guest: Courtney Hitchcock****Date Aired: June 11, 2024****Dave Gettings:**

Hey, everyone. Welcome to another edition of *FCRA Focus*, the podcast that discusses all things credit reporting. Today, we're going to do something slightly different and focus on another acronym that involves the phrase Fair Credit. We're going to spend a little time talking about the Fair Credit Billing Act, or the FCBA. Although the name of the podcast is *FCRA Focus*, we are nothing if we are not flexible, and at least the statute uses the word credit.

The reason we're going to focus on the FCBA today is because we've seen a real increase in FCBA claims recently, including pro se claims. Some of our clients are not always familiar with the ins and outs of the procedure that the FCBA follows. We thought it would be a good idea to do a little podcast on it and talk for about 15 or 20 minutes about what the FCBA is and what's required.

Joining us today to talk about that is one of my colleagues, Courtney Hitchcock. In classic post-COVID fashion, Courtney is right down the hall from me, but we are making this podcast go to her office through a million miles in space and then probably back down to you. Courtney, welcome to the show. Before we get started, can you tell us something interesting about yourself that is unrelated to law, or credit reporting?

Courtney Hitchcock:

Sure. Thanks so much for having me, Dave. Something interesting about me is that I actually did track and field in college, when I did D2 field events. I did shot put, javelin, discus, hammer throw, all those things.

Dave Gettings:

You have been next to me for over a year, and I never knew you threw javelin, or shot put.

Courtney Hitchcock:

Yes.

Dave Gettings:

Is there any chance you still have a javelin you can bring into your office and keep on the wall?

Courtney Hitchcock:

I don't have any javelins with me. I'm sorry. Colleges don't like you taking them from campus.

Dave Gettings:

I didn't know colleges had a rule about not taking the javelin, but I guess, that makes sense.

Courtney Hitchcock:

Yeah.

Dave Gettings:

All right. Well, that was interesting and did not relate in any way to credit reporting. All right, so Courtney, let's get started with the basics and frankly, we'll probably just continue with the basics the entire podcast. But we know the FCBA stands for the Fair Credit Billing Act, because we talked about that on the intro, but what are some other basics of the FCBA? What is it and why should we care?

Courtney Hitchcock:

Yeah. The FCBA is really a mechanism. It's a part of TILA, the Truth in Lending Act, and it's really a mechanism for customers, or consumers to dispute billing errors on their monthly card statement. The FCBA covers open-ended credit transactions, so it's not going to cover a mortgage, or a fixed-end auto loan. It's going to cover things like, your monthly credit card statement. Basically, it's a way for consumers to dispute errors that they think occur in their bill and the statute has some fairly standard language about what constitutes a billing error. It's basically a way for everyday consumers to interact with their credit card companies for the most part.

Dave Gettings:

I know we've seen a lot of claims in FCBA recently. In my experience, it's been a lot of pro se claims and a lot of claims in arbitration, not as many in court. Have you had a similar experience?

Courtney Hitchcock:

I would agree with that for the most part. I have seen a slight amount of FCBA claims in court. But I agree with you. I think for the most part, they're brought by pro se litigants and usually, given the agreements between those litigants and their credit card companies, those claims are arbitrated. I do agree with you. Generally, you're not going to be seeing this in federal court.

Dave Gettings:

You talked a little bit earlier about billing errors. What are the types of billing errors that may be covered by the FCBA?

Courtney Hitchcock:

Billing errors are things like, unauthorized charges, let's say, your credit card is stolen and someone makes a charge on your card that you did not authorize. It could be charges in the wrong amount. Let's say, you have a monthly magazine subscription and that amount suddenly changes. You can dispute that. It could be something as simple as the wrong interest payment calculated. Or it could be something as I missed a credit for this item that I returned to the store. Very routine things like that generally are going to constitute billing errors.

Dave Gettings:

Got it. The thing I found interesting years ago when we started seeing some of this FCBA litigation and doing some compliance work is that the FCBA is really more of a procedural statute, as opposed to a substantive statute. It doesn't care as much about whether there was actually a billing error, as much as whether you follow the procedure for addressing the billing error. Now, of course, it's important substantively to see if you committed an error, but that's really not what the statute's geared towards. Can you talk a little bit, first, about borrower procedures? What triggers the FCBA, generally?

Courtney Hitchcock:

The FCBA is only triggered if a borrower is submitting a written dispute to the creditor, and that written dispute generally has to lay out a fair amount of information for the creditor to be able to pursue that dispute and to investigate it. The first thing would be the borrower has to submit the dispute and it needs to be sent to the address that the creditor has designated for that dispute.

Dave Gettings:

Where do you typically see that address? On a credit card statement, on the account opening documents? I guess, really the creditor's discretion, right?

Courtney Hitchcock:

Yeah. It could be on the monthly statement. I think in general, you're going to see that on the terms and conditions of your credit card with your credit card company.

Dave Gettings:

There's a time limit, right? The borrower's got to send a letter within 60 days from the date of the first billing statement, where the error was sent, correct?

Courtney Hitchcock:

Yes. That is correct. When the borrower is sending that written dispute, they need to obviously include their name, the account information, and specifically, they need to highlight to the creditor which charge they're disputing and why they're disputing that charge. What is wrong with it. They can't just say, "Oh, I'm disputing XYZ charge every month." They need to say, "Okay. This is the charge I'm disputing and this amount and this is why."

Dave Gettings:

We've talked about the borrower procedures. I think it's good to pause, because some of our listeners are obviously defendants in cases, that the borrower procedures do create a lot of defenses for defendants. First, it's only triggered by a written dispute. We've seen plaintiffs file an FCBA claim based on oral disputes, which does not trigger the requirements of the statute. It's got to be sent within 60 days from the date of the first billing where the error was. That also is a defense. If it's a year old, the plaintiff is not going to have a valid FCBA claim.

Then also, like you said, the letter must include specific information regarding, for example, a statement that there's a billing error and an explanation as to what the billing error is. Much like, for example, the FCRA, I emphasize C, even though C is the same in both statutes, I should have said the FCRA, the dispute really can lay out the contours of the claims. Because if you're claiming something in the lawsuit that was not at issue in the dispute itself, that's not going to be a valid claim. It really is, even on the front end, a very procedural statute that does create a lot of defenses for defendants right at the outset. Especially if it's a pro se plaintiff, sometimes they don't know all that's required in the borrower's procedures and don't realize it's a little bit of a trap for the unwary.

Courtney Hitchcock:

Yeah. I would agree with that completely, Dave. I think that if you are an entity that's facing one of these claims, again, the first thing you want to do is look at what is actually being disputed and whether there was a written dispute or not. Like you said, there's a one-year statute of limitations. You may be able to dismiss the claim outright on that ground alone. Then you can go and you can look and see, did we even receive a written dispute? If we did, what is in that? Because what we're seeing is that a lot of these pro se claimants, or plaintiffs, they're not really explaining what's wrong with their statement and they're not following those FCBA procedures. They see the term FCBA, Fair Credit Billing Act, and they understand that it applies to billing errors. Like you said, they don't understand the contours of the statutory procedure. That's really creating a lot of defenses, if you're a defendant to one of these claims, that can be very helpful.

Dave Gettings:

All right. Let's switch over to the creditor's procedures. There are certainly procedures on the bar over side. What are some of the highlights of what a creditor must do when they receive a valid FCBA dispute?

Courtney Hitchcock:

Upon receipt of a dispute, a creditor under the statute's language should issue a written acknowledgement of the dispute within 30 days of receiving the dispute. The statute doesn't really lay out any other specific instructions as to that, but it does need to be a written confirmation that we have received that dispute. Following that confirmation, the statute allows a creditor up to 90 days to investigate a dispute.

That investigation may involve reaching out to the borrower for more information. Like I said, pro se claimants, or plaintiffs in particular tend to be lacking in some of the details of their communication. You have 90 days as a creditor to investigate that claim. Then after you investigate, let's say, you find that everything is accurate as a creditor. You then send written confirmation of your investigation to the claimant after that 90-day period, and you need to explain why the charges are valid. Or if you make a change, you can explain why you maybe reverse the charge and explain that to the borrower as well.

Dave Gettings:

Yeah. Those are all good points. I think the main take home regarding the creditor's procedures is there are firm timeframes under the FCBA. Like we said, it's a procedural statute. A creditor needs to have procedures in place when they receive a dispute to assess whether it's governed by the FCBA, and then make sure they timely respond and timely conduct the investigation. Because even if the dispute is wrong, a creditor can still face hurdles in the litigation front just based on the process alone. A lot of clients don't really appreciate that. They don't necessarily understand, some do, that there's very specific timeframes involved and the failure to comply with the timeframes could lead to liability, when otherwise, there may not be any other liability.

Courtney Hitchcock:

I agree with that. What is really interesting about the language of the statute is that after a creditor conducts its investigation, while a borrower can send another dispute to the creditor within 10 days, that investigation still stands, and the language of the statute actually says that the creditor has no further obligation if the borrower still continues to assert the same problem. Complying with the procedural contours of the FCBA can really protect a creditor, almost not quite completely, but substantially in this type of litigation.

Dave Gettings:

Yes. Courtney, people are probably wondering, "Okay, if I mess up, what are the damages?" What does the FCBA say about the statutory damages construct?

Courtney Hitchcock:

After you've completed your investigation, let's say, a creditor does make a mistake, the borrower is technically allowed to maintain up to \$50 of that disputed charge. The statute is bare in terms of additional monetary damages. What we've seen in litigation is that the remaining

TILA provisions, that is Section 1640, is going to govern those damages. Those damages will be actual damages, as well as statutory damages up to \$5,000.

Dave Gettings:

Got it. What we've seen a lot, at least what I've seen a lot in FCBA litigation, given the damages scheme is that, and I'm obviously jaded, because I'm a defense lawyer, but you may see consumers submit FCBA disputes on valid debts in order to try to find a way not to pay the debt. In other words, it's a valid debt. Hopefully, the creditor does not follow the proper procedure under the FCBA, which creates leverage for the plaintiff to say, "Well, listen. We'll do a walk away and I won't pay the debt if I don't – you don't have to pay me anything under the FCBA." I'm guessing, that matches your experience, Courtney, but am I on an island here?

Courtney Hitchcock:

Yes. That matches my experience.

Dave Gettings:

As we're wrapping up, what are the typical steps you recommend when clients get hit with an FCBA claim? What do they do to investigate?

Courtney Hitchcock:

Yeah. I would say, the first thing that a client, or a creditor should do when they're getting hit with this FCBA claim is look to the complaint, or the arbitration demand to see what exactly is being disputed and then check and see if you actually received a written dispute. You can look at a couple of things. The timing first. It may be barred by the statute of limitations. You can also look at the charge that's disputed. If it's been over 60 days since that charge first appeared, that claim is also barred, and those are generally very common ways that these claims can get thrown out.

I would also tell the client to look at sometimes, we'll see these claims during the middle of an investigation. If there's an active investigation going on, I would inform the client of those statutory deadlines that we've discussed already. Finally, I would look at what is the cost of the claim. If the claim is only over a \$50 magazine subscription, you may want to consider ways to settle that matter before going full steam into litigation.

Dave Gettings:

It sounds like a very specific example, Courtney, of a \$50 magazine subscription. Have you had that case before?

Courtney Hitchcock:

I have had a case where someone disputed a subscription for a magazine. I don't recall if it was \$50, but that does come to mind. Plane tickets are another big one that we see disputed.

Dave Gettings:

All right, Courtney. Last question. You're in your lawyer clothes. How far do you think you could throw a javelin right now?

Courtney Hitchcock:

I don't know. I don't even remember my PR. I don't know. I'd like to say, maybe 20 meters. I don't know.

Dave Gettings:

In American terms, that's about 60 feet?

Courtney Hitchcock:

Sure.

Dave Gettings:

All right. See, you can tell the podcast is not scripted, because I put you on the spot and you had no idea how you could throw a javelin right now.

Courtney Hitchcock:

Yes.

Dave Gettings:

All right. Well, Courtney, anything last to say about the FCBA before we wrap it up?

Courtney Hitchcock:

Nope. No. Thanks for listening. That's all I'd say.

Dave Gettings:

All right. We'd like to thank everyone for listening to the podcast today. Don't forget to visit our blogs, ConsumerFinancialServicesLawMonitor.com and TroutmanPepperFinancialServices.com. Please, subscribe to our podcast at all your favorite podcasting locations. Thanks for listening. Take care.

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