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The Consumer Financial Protection Bureau Turns Five: The Evolving Legal and Regulatory Landscape

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Jonathan L. Pompan, Venable LLP

Alexandra Megaris, Venable LLP

Gregory Nodler, Consumer
Financial Protection Bureau



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Introduction

- **CFPB's Authority Over Debt Collection**
- **Debt Collection Rulemaking**
- **Supervision and Examinations**
- **Areas of Focus in Key Enforcement Actions:**
 - Reasonable basis to collect and litigate
 - Time-barred debt
 - Credit reporting
 - Misleading representations in litigation
 - Due diligence and monitoring of service providers
- **What to Expect in 2016 and Beyond**



Five Years and Five Main Developments



Drivers of Standards & Expectations

Submit a complaint
Have an issue with a financial product or service? We'll forward your complaint to the company and work to get a response from them.

CHECK YOUR COMPLAINT STATUS
Check status Logout

Para presentar una queja en español, llame al (855) 411-3272

Choose a product or service to get started
If you don't want to submit a complaint, you can tell your story.

MOST COMMON

- Mortgage
- Debt collection
- Credit reporting

OTHER PRODUCTS AND SERVICES

- Bank account or service
- Credit card
- Money transfer
- Payday loan
- Student loan
- Vehicle or other consumer loan

FINAL RULES ISSUED BY THE CFPB

2015
JUNE 10
Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service

JUNE 9
Minimum Requirements for Appraisal Management Companies

APRIL 15
Subversion of Credit Card Agreements Under the Truth in Lending Act (Regulation Z)

JANUARY 20
Homeownership Counseling Organizations Lists and High-Cost Mortgage Counseling Interpretive Rule

**UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU**

**ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0022**

In the Matter of:

CONSENT ORDER

Encore Capital Group, Inc., Midland Funding, LLC, Midland Credit Management, Inc. and Asset Acceptance Capital Corp.,

Supervisory Highlights

complaint

cfpb Consumer Financial Protection Bureau
1700 G Street, N.W., Washington, DC 20552

cfpb Consumer Financial Protection Bureau
1700 G Street, N.W., Washington, DC 20552

CFPB Compliance Bulletin 2015-07

Date: December 16, 2015
Subject: In-Person Collection of Consumer Debt

In response to recent practices observed during supervisory examinations and enforcement investigations, the Consumer Financial Protection Bureau (CFPB or Bureau) issues this compliance bulletin to provide guidance to creditors, debt

No. 15-0543
In the United States Court of Appeals for the Ninth Circuit
Eddie Workman, Individually and on behalf of a class, Plaintiff-Appellee,
vs.
Northcod Group, Inc., Defendant-Appellant.
On Appeal from the United States District Court for the Western District of Washington, Case No. 13-2187-MS.
Filed at Seattle, Washington, Washington, 12/16/2015.
Case No. 15-0543

Version 3 - October 2012

CFPB Supervision and Examination Manual

cfpb Consumer Financial Protection Bureau

2015 Desklet

- Administrative Proceeding File No. 2015-CFPB-0011 - Granite Mortgage Corporation
 - Consent order
 - Stipulation
- Administrative Proceeding File No. 2015-CFPB-0010 - International Land Consultants, Inc., et al.
 - Consent order
 - Stipulation
- Administrative Proceeding File No. 2015-CFPB-0009 - Region Bank
 - Consent order
 - Stipulation
- Administrative Proceeding File No. 2015-CFPB-0008 - Fort Knox Military Assistance Company, LLC
 - Consent order
 - Stipulation
- Administrative Proceeding File No. 2015-CFPB-0007 - F.M.K. Financial Corporation
 - Consent order
 - Stipulation
- Administrative Proceeding File No. 2015-CFPB-0006 - Flagship Financial Group, LLC
 - Consent order
 - Stipulation
- Administrative Proceeding File No. 2015-CFPB-0005 - American Preferred Lending, Inc.
 - Consent order
 - Stipulation
- Administrative Proceeding File No. 2015-CFPB-0004 - New Day Financial, LLC
 - Consent order
 - Stipulation
- Administrative Proceeding File No. 2015-CFPB-0003 - Continental Finance Company, LLC
 - Consent order



CFPB REGULATORY, SUPERVISORY, AND ENFORCEMENT AUTHORITY



Entities CFPB Has Jurisdiction Over

- Banks with more than \$10 billion in assets, concerning the offering or provision of a “consumer financial service or product,” and affiliates of banks.
- Nonbanks concerning offering or provision of “consumer financial service or product.”
- Service providers to aforementioned entities.
- Related persons of aforementioned entities.
- Consumer financial service or product *defined to include debt collection.*



Laws and Regulations CFPB Enforces

- Enumerated consumer laws, including
 - Fair Debt Collection Practices Act
 - Fair Credit Reporting Act and Furnisher Rule
 - Electronic Fund Transfer Act and Reg. E
- CFPB's organic statute, which prohibits unfair, deceptive, or abusive acts and practices (UDAAP)

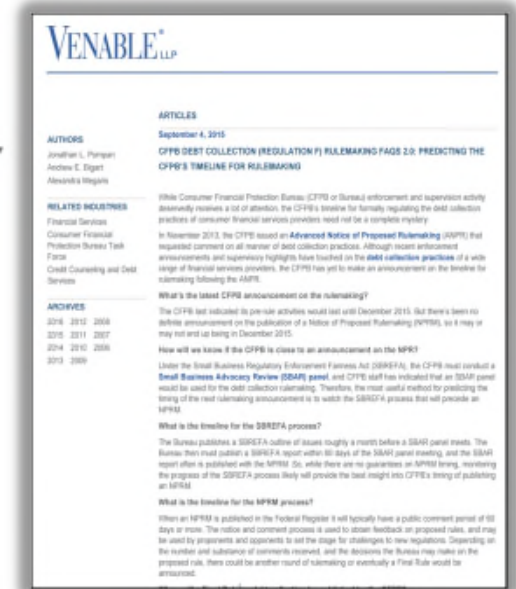


CFPB DEBT COLLECTION RULEMAKING



Debt Collection Rulemaking

- CFPB is authorized to issue debt collection rules under the FDCPA **and** Dodd-Frank Act's UDAAP provisions.
- In November 2013, CFPB announced Advanced Notice of Proposed Rulemaking, seeking comments, data, and information from the public about debt collection. CFPB received more than 23,000 comments.
- Before final rules go into effect, CFPB first needs to issue proposed rules, which will open a new comment period. After taking comments into consideration, CFPB will issue final rules.
- Unlikely to go into effect until late 2017/early 2018.
- CFPB has not announced a timeline for this.



What Will Rules Likely Cover?

- ANPR covered all aspects of the debt collection market, including the following:
 - Transfer and accessibility of information upon sale and placement of debts;
 - Validation notices, disputes, and verification;
 - New communications technology;
 - Third-party communications (e.g., recorded messages);
 - Payment methods and fees;
 - Time-barred debt (e.g., disclosures, revising SOL); and
 - Substantiation.
- Likely will apply to first-party collections (FDCPA does not).



Debt Collection Guidance

- **CFPB Bulletin 2013-07:** Prohibition of UDAAP in the Collection of Consumer Debts
- **CFPB Bulletin 2013-08:** Representations Regarding Effect of Debt Payments on Credit Reports and Scores
- **CFPB Bulletin 2014-01:** FCRA Requirement that Furnishers Conduct Investigations of Disputed Information
- **CFPB Bulletin 2015-07:** In-person Collection of Consumer Debt
- **CFPB Bulletin 2016-01:** Furnisher FCRA Obligations to Have Reasonable Written Policies and Procedures



CFPB SUPERVISION AND EXAMINATIONS



Supervision Authority Over Debt Collection

- Since January 2013, any firm with more than \$10 million in annual receipts from consumer debt collection subject to supervisory authority.

CFPB

Examination Procedures

Debt Collection

Examination Procedures Debt Collection

These examination procedures apply to larger participants in the consumer debt collection market defined by 12 CFR 1090.105 and other entities within the supervisory authority of the Consumer Financial Protection Bureau (CFPB) to the extent that they seek to collect debt from consumers. The procedures contain a series of modules, grouping similar requirements together. Prior to using these procedures, however, examiners should complete a risk assessment and scope memorandum. Depending on the scope, and in conjunction with the compliance management system review procedures, each examination will cover one or more of the following modules:

1. Entity Business Model
2. Communications in Connection with Debt Collection
3. Information Sharing, Privacy, and Interactions With Consumer Reporting Agencies
4. Consumer Complaints, Dispute Resolution, and Debt Validation
5. Payment Processing and Account Maintenance
6. Equal Credit Opportunity Act
7. Litigation Practices, Repossession, and Time-Barred Debt



Examination Appeals Process



Consumer Financial
Protection Bureau

1700 G Street NW, Washington, DC 20552

CFPB Bulletin 2012-07

Date: October 31, 2012

Subject: Appeals of Supervisory Matters

The CFPB recently began issuing examination reports and supervisory letters to financial service providers that it supervises. Today we are implementing a policy that would allow our supervised entities to appeal certain supervisory findings in those examination reports and supervisory letters. The policy promotes the CFPB's goals of having constructive supervisory relationships with supervised entities and having a fair and factually based supervision program. We expect that offering a credible, fair opportunity to appeal supervisory findings should lead to greater industry compliance, and heightened compliance should in turn produce better markets for consumers.

The appeals process, as outlined in the attached document, involves a review of the appealed matter by a committee that includes management at CFPB Headquarters in Washington, D.C. and representatives of regional offices that were not involved in the matter under review. Financial service providers, including depository institutions, under CFPB's jurisdiction may request a review of a less than satisfactory compliance rating (a 3, 4, or 5) or any underlying adverse finding set forth in the relevant examination report, or adverse findings conveyed in a supervisory letter.

The CFPB will periodically review and make any necessary updates to its appeals policy. In addition, the CFPB welcomes feedback on the policy. The public may send comments to CFPB_Supervision@CFPB.gov.

Attachment

- Financial service providers under the CFPB's jurisdiction may request a review of a less than satisfactory compliance rating or any underlying adverse finding set forth in the relevant examination report, or adverse findings conveyed in a supervisory letter.
- Appeals are handled by a committee that includes management at CFPB headquarters in Washington, D.C. and representatives of regional offices that were not involved in the matter under review.
- Requires written submission, supporting documentation, and adherence to time frames.
- Appeals are confidential and can be worth the effort; however, they may be contemporaneous with enforcement.



CFPB ENFORCEMENT ACTIVITY



Snapshot of Enforcement Actions Involving Debt Collection

No. of settlements: 24

No. of lawsuits: 3

Total CMP: \$134M

Total restitution: \$350M

Total debt relief: \$128M+

*As of May 20, 2016. Dollar figures are approximate and do not include non-public supervisory actions.



Reasonable Basis to Collect / Litigate

- String of consent orders, including Chase, Encore, PRA, Hanna, Citi, and Pressler & Pressler, imposing new requirements relating to debt substantiation, handling of disputes, and documentation.
- Emphasis on purported degradation of data integrity when debts are sold (and resold).



Time-Barred Debt

- Although CFPB has stated it is not *per se* illegal to collect time-barred debt, it has required companies to affirmatively disclose in consumer-facing communications that the account is time-barred.



Credit Reporting

- Reasonable investigation of disputes (e.g., Syndicated Office Systems, LLC; Encore; PRA)
- Misrepresentations relating to reporting and impact on credit score (e.g., American Express; ACE Cash Express)
- Inaccurate reporting (e.g., Collecto, Inc. d/b/a EOS CCA; In re DriveTime)



Misrepresentations in Litigation

- Misleading affidavits, such as
 - Robosigning (e.g., Chase, Pressler & Pressler)
 - Representing that debts have been selected for legal action based on a review by an attorney (e.g., PRA)
 - Changes to dates and signatures after affidavits executed (e.g., Citi)
 - Implying that failure to dispute debt means debt is assumed valid (e.g., Encore)
- Meaningful attorney involvement before initiating lawsuit (e.g., Hanna)



Due Diligence & Monitoring by Service Providers

- In April 2015, CFPB filed lawsuit in Atlanta against Universal Debt & Payment Solutions, related to a phantom debt collection scheme.
- In addition to the debt collection agencies and associated individuals, named four payment processors and telephone marketing service provider, alleging they provided substantial assistance to the fraudulent conduct.
- Raises important questions regarding amount of due diligence on and monitoring of their clients service providers must do.



CFPB ADVOCACY & PARTNERSHIPS



Coordination with Other Enforcement Agencies

- FTC's Operation Collection Protection
 - In fall 2015, FTC announced the first coordinated federal-state enforcement initiative targeting deceptive and abusive debt collection practices.
- Enforcement Coordination
 - FTC: Coordinated case against mortgage servicer, which included debt collection allegations.
 - State Attorneys General: Coordinated cases against Freedom Stores and Chase
- Coordination of Examinations w/CSBS



Consumer Complaints

- Office of Consumer Response
 - Began taking complaints about debt collection July 2013.
 - Collects, investigates, and responds to complaints.
 - Uses data for law enforcement purposes and shares with other agencies like FTC.
 - Publishes data online.
- Debt collection perennially the most complained-about product in Bureau's complaint system.

Primary issue	%
Continued attempts to collect debt not owed	40%
Communication tactics	18%
Disclosure verification of debt	15%
Taking or threatening an illegal action	11%
False statements or representation	9%
Improper contact or sharing of information	7%
Total debt collection complaints	100%

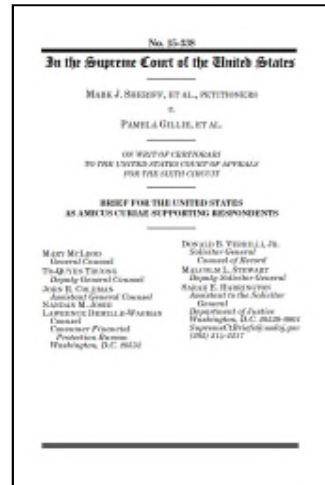
Source: 2015 FDCPA Report



Advocacy and Education Highlights

CFPB Amicus Program

- The CFPB (often with FTC) has appeared as amicus (friend of the court) in several cases arising under the FDCPA, FCRA, and other relevant law.



Education Initiatives

- Ask CFPB for debt collections was initiated in October 2012. As of January 2016, debt collection was the second most-viewed category (credit reports and scores was first).
- In July 2013, the Bureau added five sample letters to Ask CFPB that consumers may use when they interact with debt collectors. These letters can help consumers get valuable information and protect them from inappropriate or unwanted collection activities. The five letters address the following situations: (1) consumers who need more information about a debt; (2) consumers who want to dispute their debt; (3) consumers who want to restrict how and when a collector can contact them; (4) consumers who have hired an attorney with respect to the debt matter; and (5) consumers who want to stop all communication from debt collectors



CFPB 2016 AND BEYOND



CFPB's Priorities Over the Next Two Years

- From Day 1, CFPB has focused on four types of problems consumers face (the “4Ds”):
 - Deception;
 - Debt traps;
 - Dead ends; and
 - Discrimination.
- In February, CFPB announced a nine-point plan for addressing its near-term priority goals. Credit reporting and debt collection were at the top of the list.



Priority: Credit Reporting

The CFPB envisions a consumer reporting system where furnishers provide and consumer reporting companies maintain and distribute data that are accurate and inclusive of more consumers. This should be supplemented by effective and efficient dispute management and resolution processes for consumers.



Priority: Debt Collection

The CFPB envisions a debt collection market where everyone who collects debts substantiates the debts they are collecting, accurately identifies debtors, provides debtors with appropriate information, and communicates with debtors about their debts in a respectful, lawful, consumer-oriented way.



Million-Dollar Question: How Might the 2016 Election Impact CFPB?



Thank you - Questions



Jonathan L. Pompan
Venable LLP
Partner and Co-Chair of CFPB Task Force
202.344.4383
jlpompan@Venable.com



Alexandra Megaris
Venable LLP
Attorney
212.370.6210
amegaris@Venable.com



Gregory Nodler
Consumer Financial Protection Bureau
*Senior Counsel for Enforcement Policy
and Strategy*
www.consumerfinance.gov

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