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REGULATORY COMPLIANCE IN AN EVOLVING LEGAL LANDSCAPE

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Monday, July 17, 2017
2:00-3:00 pm PT



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What We'll Cover Today

- **Our Panelists - Different Perspectives**
- **Political and Regulatory Landscape**
- **Regulatory Outlook**
- **Emerging Trends**
- **Avoiding Public Enforcement**
- **Wrap Up**

Our Panelists



April Lindauer
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Anne Thomas
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115th Congress and New President: What's the impact?



Overview of the Political and Legislative Landscape

Key House Leadership

Republican Majority Leaders



Left: Kevin McCarthy (House of Representatives),
Right: Steve Scalise (Majority Whip)

Speaker of the House



Rep. Paul Ryan (R-WI)

DEMOCRATIC MINORITY LEADERS



Left: Nancy Pelosi (House of Representatives),
Right: Steny Hoyer (Minority Whip)

Key Senate Leadership

Key Senate Leadership
Republicans

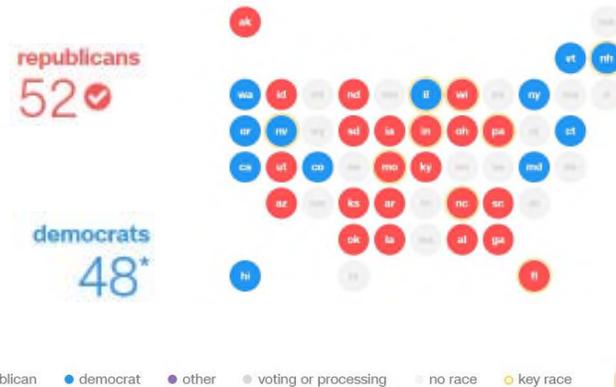
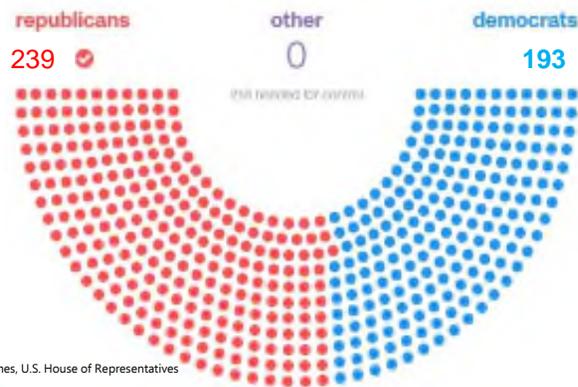


Left to right: Majority Whip Rep. John Cornyn (R-TX)
and Majority Leader Rep. Mitch McConnell (R-KY)

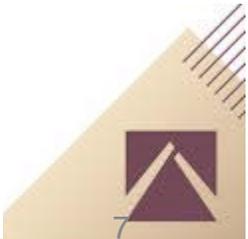
Key Senate Leadership
Democrats



Left to right: Minority Leader Rep. Chuck Schumer (D-NY)
and Minority Whip Rep. Dick Durbin (D-IL)



Source: The New York Times, U.S. House of Representatives



115th Congress – Financial Services

Financial Services Policy

- Focus on pro-growth policies
- Nominations: Treasury; Fed Governors; SEC
- **Dodd-Frank Reform**
- JOBS Act
- GSE Reform
- “FinTech”
- DOL Fiduciary Duty reform / repeal
- **CFPB Reform**
- Federal Reserve reform
- **Cybersecurity**
- Sanctions / AML – Iran

Regulatory Reform

SENATE: Federal Regulatory Improvement Act (S. 1484)

HOUSE: Financial CHOICE Act 2.0 (H.R. 10)

Consensus Views and Commonalities:

- “Too Big to Fail”/ SIFI / FSOC Changes
- Community bank relief: streamline exams, mortgage rules
- Federal Reserve transparency
- Capital formation for emerging businesses and other JOBS Act

CFPB Promises Business as Usual Post-PHH and Post-Obama and FTC Continues as a Cop on the Beat

USCA Case #15-1177 Document #1561561 Filed 02/16/2017 Page 1 of 2

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15-1177 **September Term, 2016**

CFPB-2014-CFPB-0002
Filed On: February 16, 2017

PHH Corporation, et al.,
Petitioners
v.
Consumer Financial Protection Bureau,
Respondent

BEFORE: Garland*, Chief Judge, and Henderson, Rogers, Tatel, Brown, Griffith, Kavanaugh, Srinivasan, Millett, Pillard, and Wilkins, Circuit Judges

ORDER

Upon consideration of respondent's petition for rehearing en banc, the briefs amici curiae in support of the petition, the response of the United States to the petition, the response of the petitioners to the petition, the supplemental response of petitioners, and the vote in favor of the petition by a majority of judges eligible to participate, it is

ORDERED the petition be granted. Case No. 15-1177 will be reheard by the court sitting en banc. It is

FURTHER ORDERED that the judgment filed October 11, 2016 be vacated. It is

FURTHER ORDERED that oral argument before the en banc court be heard on Wednesday, May 24, 2017, in Courtroom # 20, Sixth Floor. It is

FURTHER ORDERED that, in addition to filing briefs electronically, the parties file 300 paper copies of each of their final briefs and the deferred appendix, in accordance with the following schedule:

Brief for Petitioners	March 10, 2017
Deferred Appendix (Public Filed 11/30/15 & Sealed Filed 12/1/15)	March 10, 2017

*Chief Judge Garland did not participate in this matter.

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580


Division of Enforcement Practices

May 30, 2017

Paul Sarford, Assistant Director
Supervision Examinations
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Dear Mr. Sarford:

This letter responds to your request for information concerning the Federal Trade Commission's (Commission or FTC) enforcement activities related to compliance with Regulation Z (the Truth in Lending Act or TILA); Regulation M (the Consumer Leasing Act or CLA); and Regulation E (the Electronic Fund Transfer Act or EFTA) (collectively "the Regulations").¹ You request this information for use in preparing the Consumer Financial Protection Bureau's (CFPB) 2016 Annual Report to Congress. Specifically, you ask for information concerning the FTC's activities with respect to the Regulations during 2016. We are pleased to provide the requested information below.²

I. FTC Role in Administering and Enforcing the Regulations

The Dodd-Frank Act, signed into law on July 21, 2010, substantially restructured the financial services law enforcement and regulatory system. Among other things, the Act made important changes to the TILA, CLA, and EFTA, and other consumer laws, such as giving the CFPB rulemaking and enforcement authority for the TILA, CLA, and EFTA. Under the Act, the FTC retained its authority to enforce the TILA and Regulation Z, the CLA and Regulation M, and the EFTA and Regulation E. In addition, the Act gave the Commission the authority to enforce any CFPB rules applicable to entities within the FTC's jurisdiction, which include most providers of

¹ The TILA is at 15 U.S.C. § 1601 et seq.; the CFPB's Regulation Z is at 12 C.F.R. Part 1026, and the Federal Reserve Board's (Board's) Regulation Z is at 12 C.F.R. Part 226. The CLA is at 15 U.S.C. § 1607 et seq.; the CFPB's Regulation M is at 12 C.F.R. Part 1031, and the Board's Regulation M is at 12 C.F.R. Part 213. The EFTA is at 15 U.S.C. § 1693 et seq.; the CFPB's Regulation E is at 12 C.F.R. Part 1035, and the Board's Regulation E is at 12 C.F.R. Part 203. Our understanding is that your request encompasses the CLA, an amendment to the TILA.

² A copy of this letter is being provided to the Board's Division of Consumer and Community Affairs, in connection with its responsibility for some aspects of the Regulations after the transfer date of July 21, 2011. Among other things, the Board retained responsibility for implementing the Regulations with respect to certain state-licensed lenders, under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act), Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010). See, e.g., Dodd-Frank Act, § 1029 and Subtitle H.

In the last several months, actions regarding:

- Law firm debt collection
- Student loan debt collection (parallel state AG action)
- Overdraft service fees
- Law firm collection of medical debt
- Credit reporting
- Small-dollar loan marketing and collection

- Ongoing CFPB exams (many joint with state regulators through CSBS)

Debt Collection Rulemaking 2.0

- 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.
- July 2016, CFPB issued Outline of Proposals Under Consideration and Alternatives Considered.
- Held SBREFA sessions in late August 2016.
- June 2017 CFPB announced change in direction. Now the rulemaking: (1) will apply only to third-party collectors subject to the Fair Debt Collection Practices Act (FDCPA) and (2) address only disclosure and communication requirements. The CFPB will then proceed with developing a separate rule applicable to both first and third parties to address documentation and substantiation requirements, which has been an area of focus in CFPB examinations and enforcement actions.
- A date was not provided for the release.

July 28, 2016

SMALL BUSINESS REVIEW PANEL FOR
DEBT COLLECTOR AND DEBT BUYER RULEMAKING

OUTLINE OF PROPOSALS UNDER CONSIDERATION
AND ALTERNATIVES CONSIDERED

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What to Expect in The Debt Collection Rules?

- **Transfer of Information Provided by Consumers during Collections**

The Outline contemplated a requirement that certain information provided by a consumer to a collector must be transferred to and reviewed by subsequent collectors. The types of information would likely include those that either i) affect collectors' obligations to comply with the FDCPA and other federal consumer protection laws, or ii) facilitate collector behavior that may be beneficial to consumers.

- **Updated Validation Notice and Statement of Rights**

The Outline addressed a potential requirement for all validation notices to contain certain types of information about the debt and to be accompanied by a Statement of Rights with information about consumers' rights under the FDCPA and other federal and state consumer protection laws. The Proposals also included a model validation notice and Statement of Rights.

- **Litigation Disclosure**

The Outline contemplated requiring collectors to provide a brief "litigation disclosure" in all written and oral communications in which they represent, expressly or by implication, an intent to sue.

- **Restrictions on Collecting Time-Barred Debt**

The Outline considered a requirement that collectors disclose the status and nature of time-barred debt to consumers and waive any right to sue on time-barred debt for which the statute of limitations was revived by a consumer payment. Suits and threats of suits on time-barred debt would also be prohibited.

What to Expect in The Debt Collection Rules?

- **Limited Content Voicemails**

The Outline discussed giving specific permission for collectors to leave limited-content voicemails (often referred to as "Foti messages") or messages with third persons, provided the voicemail conveys only certain types of information that do not disclose the nature of the call, and particularly that its purpose is debt collection.

- **Limits on Contact Frequency**

The Outline addressed a requirement that would impose specific numeric restrictions on the frequency of communications with consumers. In particular, collectors would be limited to placing a total of three contact attempts per week per address or phone number, and would be prohibited from making more than six total contact attempts per week. In addition, if the collector speaks with the consumer, it would be prohibited from making further contact attempts that week, without permission.

- **Limits on Location Contacts**

The Outline included a requirement that would impose specific numeric restrictions on the frequency of contacting third persons to acquire location information. Collectors would be limited to placing a total of three contact attempts per week per address or phone number, and would be prohibited from making more than six total contact attempts per week. If the collector actually contacts the consumer, he or she would be prohibited from making further contacts with third persons to acquire location information.

- **Clarification Regarding Inconvenient Times, Places, and Methods of Communication**

The Outline addressed possible standards for determining whether a time, place, or method of communication is inconvenient for a consumer in violation of the FDCPA. For example, if a consumer has a mobile phone number in one time zone and a street address in another, a time could be considered inconvenient in all of the locations in which the consumer might be.

What Does this Leave for UDAAP?: Reasonable Basis to Collect & Litigation

- 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).
- 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)

What's Not Likely Covered in First Rulemaking: Information Integrity & Substantiation

- Collectors would have to “substantiate” claims that a particular consumer owes a particular debt
 - Substantiate = have reasonable support that the individual owes the debt and amount claimed, and that the collector is legally entitled to collect the debt
 - Proposals defined types of information and documentation that would constitute “reasonable support,” and collectors would bear burden of justifying alternative approach
- Collectors would be required to substantiate debt:
 1. Before collecting
 2. During the course of collections a) following the appearance of a warning sign, or b) following a dispute
 3. Prior to filing litigation

What's Not Likely Covered in First Rulemaking: Substantiation Requirements

Before Collecting	Warning Signs
<p>Prior to commencing collections activity, collector would have to obtain fundamental information about the debt and a representation of accuracy from the debt owner</p> <p><u>Fundamental information:</u></p> <ul style="list-style-type: none"> • Full name, last known address and phone • Account number at default • Date of default, amount owed at default, and date and amount of any payment or credit applied after default • Each charge for interest or fees imposed after default and contractual or statutory source for such charges • Complete chain of title default <p><u>Representation of accuracy:</u></p> <ul style="list-style-type: none"> • Owner has reasonable written policies and procedures to ensure the accuracy of transferred information • Transferred information is identical to the information in the owner's records 	<p>Collectors would have to perform initial review for “warning signs” before collecting and perform ongoing review during course of collections, and cease collecting if warning signs arise until additional support is obtained</p> <p><u>Initial review “warning signs”:</u></p> <ul style="list-style-type: none"> • Information is facially implausible, contradictory, or not understandable • Significant % of debt in the portfolio has missing or implausible information or unresolved disputes <p><u>Ongoing review “warning signs”:</u></p> <ul style="list-style-type: none"> • Dispute is filed about the debt and underlying documents needed to respond to dispute cannot be obtained • Receipt of disputes for significant % of debt in portfolio

What's Not Likely Covered in First Rulemaking: Substantiation Requirements

Following a Dispute and Prior to Filing Litigation

Would have to obtain specific types of **documentation** before proceeding with collections upon receiving a **dispute** and before filing **litigation**

- Dispute = oral or written challenge to the validity of the debt (*e.g.*, amount of the debt or identity of the debtor) or the right of the collector to seek payment on the debt

Types of Documentation:

- Generic dispute = charge-off statement; most recent billing statement, *and/or* contract, note, application, or service agreement
- Specific dispute as to amount of debt = copy of a billing or periodic statement(s) covering the relevant time period, *and/or* underlying agreement describing the applicable interest rate or fees
- Specific dispute as to wrong consumer = copy of the credit application, new patient form, or document reflecting information from creditor's Customer Identification Program, *and* copy of the contract, note, application, or service agreement
- Specific dispute as to right of the collector = copy of the bill of sale or assignment of the debt
- Prior to litigation = all the types of documentation listed above

What's Not Likely Covered in First Rulemaking: Debt Transfers & Recordkeeping

- Additional limits on debt buyers. For example, the CFPB was considering a prohibition on the placement or sale of debt to an entity that lacks any license to purchase or collect debt, as applicable.
- A three year record retention requirement on all records documenting a debt collector's action with respect to a debt and that were relied upon for the validation notice and other claims of indebtedness.

Other FTC and CFPB Trends

- Payment processing
- Data Security and Privacy
- Disclosures and testing (CFPB survey for rulemaking, and FTC research)

Emerging State Trends



State Regulation and Examination

- Focus on consumer treatment and consumer communications
- Consumer complaints, examination, and collection litigation continue to drive scrutiny

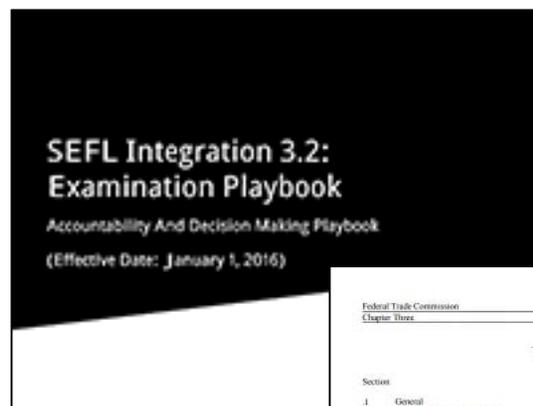
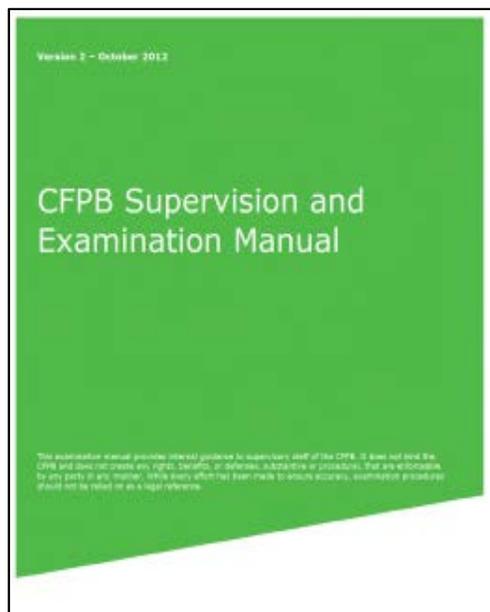
State Inquiries Becoming More Robust

- Fact finding vs. letter responses
 - Call recordings and logs
 - Account notes
 - Broader scope / systemic inquiry
- Examiners looking for consumer complaint trends and connecting back to policies and procedures
- Focus on letter and affidavit templates
- Focus on foreign language

State Law Trends and Considerations

- Increase in requirements for documentation to threaten and/or sue
- Affidavits
- Heightened dispute investigation requirements and documentation
- Limitation on post judgment remedies
- Shortening SOL
- Asset class specific restrictions, and impact on servicing, and collections
 - FinTech, including online marketplace loans, and state licensing and usury laws
 - Health care
 - Auto Loans
 - Other
- Data Security and Privacy

Avoiding Public Enforcement



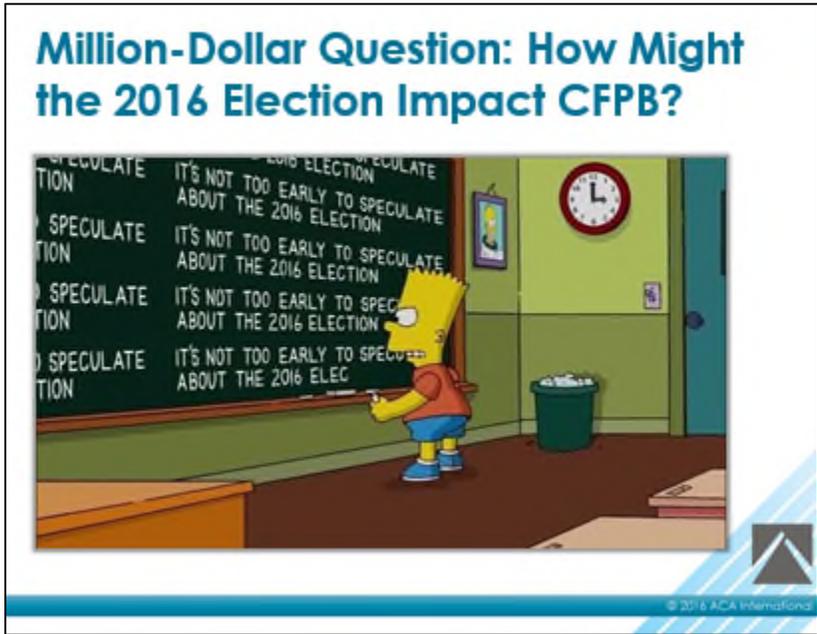
Federal Trade Commission Operating Manual
Chapter Three INVESTIGATIONS

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Last Year We Closed With....



Let's Look Into the Crystal Ball...



Thank you - Questions



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