#### ACA INTERNATIONAL CONVENTION & EXPO 2016 Denver June 16-18

HYATT REGENCY DENVER & COLORADO CONVENTION CENTER



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

Friday, June 17, 2016

Jonathan L. Pompan, Venable LLP Alexandra Megaris, Venable LLP Gregory Nodler, Consumer Financial Protection Bureau



## Legal Disclaimer

Any content included in this presentation or discussed during this session ("Content") is presented for educational and general reference purposes only. ACA International, either directly or indirectly through speakers, independent contractors, employees, or members of ACA International (collectively referred to as "ACA"), provides the Content as a courtesy to be used for informational purposes only. The Contents are not intended to serve as legal or other advice. ACA does not represent or warrant that the Content is accurate, complete, or current for any specific or particular purpose or application.

This information is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the advice of your own legal counsel. ACA is the sole owner of the Contents and all the associated copyrights. ACA hereby grants a limited license to the Contents solely in accordance with the copyright policy provided at www.acainternational.org. By using the Contents in any way, whether or not authorized, the user assumes all risk and hereby releases ACA from any liability associated with the Content.

The views and opinions of the speakers expressed herein are solely those of the presenters and not ACA International.



#### 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

				File No. 2015-CFPB- 0022	
Submit a con	4.0	POUR COMPLAINT STATUS	FINAL RULES ISSUED BY THE CFPB	In the Matter of:	CONSENT ORDER
Have an issue with a financi forward year completion to th get a response from them.		esentur unu queja en espeñol, al (885) 413-2372	2015 JUNE 10 Dortring Larger Participants of the Astronaldle Financing Markot and Deltaing Certai Astronaldic Lawing Articly as a Financial Product or Service 😤	Encore Capital Group, Inc., Midland Funding, LLC, Midland Credit	
Choose a product or service to get started #pound wave auto admits complete pound to present pro-	Morginge Detroplector	Credit reporting	JUNE 9 Madarum Registersonis for Approial Management Companies APRIL 15 Submission of Corolin Card Approximate Voder the Troth in Leaving Art (Begulation 2	Management, Inc. and Asset A Capital Corp.,	rceptance
	INTHER PRODUCTS AND SERVICES		Henserwisership Counseling Organizations Lists and High-Cast Nortgage Counseling Interportive Rule	2016 Desket	
	Bank account on the service Credit and  Feyday loan  Student loan	Warrey transfer	JANUARY 28 Anextocent to the 2013 Disspired Marting Settlement Provedhere And Department Joint and the 2013 Jano Originator Role under the Dissect Billionetty Technology Sect.	Administrative Proceedin - Caused softer <u>*</u> - Steplation <u>*</u>	g File No. 2013 (TPIF-0011 - Guarantee Mortpage Corporation 5 File No. 2013 (TPIF-0010 - International Land Constitutes, Inc., et al.
pervisory Highlights	sint	leTk	No 14 MM Charle Charl A Types In the Charle International Appendix A Charles International Appendix A Charles Market Annual Appendix A Cha	vision and + Caused and + Signation	g File No. 2013 CTFE-0004 – Regions Back g File No. 2015 CTFE-0008 – Pert Rasen Military Assistance Company, 11.C
CFPD Consumer Protection E 1700 G Street, N.W., Washington, 1 CFPB Compliance Buller	breau DC 20552 tin 2015-07	Discondi ki Padia Gloweri Char Perfektor Tom Perfektor Jonatom File Statuster File Conserve C	Advance Field  Advance	Cranst inde 1  Significian 3  Attaining the Provide  Significian 3  Significian 3  Significian 3  Significian 3	g File No. 2015 CFFIP-0007 – R.M.K.Fisancial Corporation g File No. 2015 CFFIP-0006 – Flagship Financial Genze, LLC g File No. 2015 CFFIP-0005 – American Preferred Lending, Inc.
Date: December Subject: In-Person	16, 2015 Collection of Consumer De	bt	Trank Read	Stplaton 7	g File No. 2013 CPPB-0004 – New Day Hazanial, LLC
enforcement investigation	actices observed during sup ons, the Consumer Financia pliance bulletin to provide a	I Protection Bui	reau (CFPB or	Administrative Proceedin + Concert order 75	g File No. 2013-CTVII-0003 – Continental Fiance Company, LLC



© 2016 ACA International



UNITED STATES OF AMERICA CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING

#### 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 <u>not</u> announced a timeline for this.

VENABL	E.""			
	ARTICLES			
AUTHORS Jonathan L. Pampan Anchew E. Diget Mexanitra Meganis	SIGNINGER 4, 2015 CIPIE DEST COLLECTION (RECULATION P) RULEMAKING PAGE 2/2: PREDICTING THE CIPIE'S TIMELINE FOR RULEMAKING			
RELATED INCLUSIONES Financial Services Consumer Financial Protection Screen Tank Force Credit Counseling and Debt Services	While Computer Francial Postaction Banasis (CFPB or Banasi) enforcement and supervision activity desarvedly receives a loc of attention the CFPB is treative for formally regulating the debt authention practices of computer Mancal services previous head not be a complete replace			
	In November 2013, the CHYE leased on Advanced Soboe of Proposed Releasing (2009), that requested comment on all ensures of beta collicitory prodoces. Although recars influences wavescreeness to a spennicely relegation beta toxified in the data of addicated produces of the series providers. The CHYES has yet to make an anisotnement as the tendent for spennicary discoursing the ARPR.			
	What's the latest CFPB announcement on the rulemaking?			
ARCHIVES 3016 3015 2018 3015 2011 2007	The CFFB bat indicated to pre-role activities would last with December 2015. But there is been no definite amountement on the publication of a Nation of Proposal Rulemaking INVTRP, we it may in may not and not to bring in December 2015.			
2214 2210 2000	How will we know it the GPPB is close to an announcement on the MPR7			
3043 3866	Uniter the limit Business Regulatory Edwarment Farmess Act (2004FFA), the CPFB and involution final Business Altractory Review (BBAR) panel, and CPFB shall have indexided that an ISBAR pane- sauda bia and the odd statistics containing. Therefore, the must and altractorid by patient gra- tinging of the next salemaking associated in to salest the SBREPA process that will precide an 1495M.			
	What is the timeline for the SBREFA process?			
	The Brances patients as SIRGERA output of Lasers studying a neutral backets as SIRAP point means. The Reason them must patient as SIRRERA space within SIRAPS of the SIRAP panel meaning, and the SIRAP space study as a space study of SIRRERA space study and space study as AMPRII brand, annother the programs at the SIRRERA spacess likely will provide the back major into CFTRE's merg of patients an AIRFAIL			
	What is the Inveline for the MPRM process?			
	Titters en LPERT a publisho in the Yorken's linguistic and public public public convent parent of the grap or more. The moles and convent public public public public public public and take used by programmar and popuments to air the stoppe for statistinges to the expandion. Dispariting the useder and inductions of intermeting increased, and the devisions the American multi-ensure in the program of mit, these could be another mund of submeting or eventually a First Rule would be ammarzonal.			



# 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**

700 G Street f/W, 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 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 <u>CFPB\_Supervision@CFPB.gov</u>.

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



\*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 consumerfacing 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)

© 2016 ACA International

 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)

© 2016 ACA Internationa

 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 ninepoint plan for addressing its near-term priority goals. Credit reporting and debt collection were at the top of the list.

1700 G Street NW, Washington, DC 20552

#### Policy priorities over the next two years

The Consumer Financial Protection Bureau (CEPB or Bureau) is focused on creating a consumer financial marketplace that works for all consumers. Our mission is to make markets for consumer financial products and services work for consumers and responsible providers by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives.

When we do our work well, we help to ensure that consumers are able to make the financial decisions they believe are best for themselves and their families in a fair marketplace—one where prices are clear up front, risks are visible, nothing is buried in fine print, and everyone plays by the rules. In a market that works, consumers should be able to make direct comparisons among financial products and services and no provider should be able to use unfair, deceptive, or abusive practices.

Over the past year, the CFPB has engaged in an intensive planning effort to prioritize how we will use our tools – together – to tackle some of the most troubling problems facing consumers. There are four industryichle problems that we have been focused on: deception, or situations where the costs and risks of a financial decision are obscured or opaque; debt traps, or practices that trigger a cycle of debt where comments rack up substantial costs over time; dead ends, or situations where people cannet "vote with their fact" when they are treated unfairly; and discrimination, or unequal treatment based on characteristics such as race, gender, or other biases prohibited by law. In developing our priorities, we assessed these problems within and across markets and then prioritized them based on the extent of the consume harm that we were able to identify and our capacity to eliminate or mitigate that harm.

The result, below, is a set of near-term priority goals where we hope to make substantial progress over the next two years, and a plan for how to deploy our shared cross-Bureau resources to do so.

To be clear, these goals do not capture all of the important work we are doing. In particular, the Bureau will continue to fulfill its mandate under the Dodd-Frank Act to police all markets within

consumerfinance.gov



# **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

© 2016 ACA International



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

To view Venable's index of articles and PowerPoint presentations on related legal topics, see <u>www.Venable.com/cfpb/publications</u>.

To view information and materials from the CFPB, see <u>www.consumerfinance.gov.</u>