

Debt Collection

CFPB Regulatory Update

by Jonathan L. Pompan and Alexandra Megaris

The regulation of debt buyers and collectors continued at the Consumer Financial Protection Bureau (CFPB) during 2017. The two most significant CFPB developments were (1) the announcement of a bifurcated debt collection rulemaking and (2) the resignation of Richard Cordray as director of the CFPB and the subsequent presidential appointment of Mick Mulvaney as acting director, which is being disputed in court. The CFPB also announced law enforcement actions involving the debt collection practices of servicers, debt settlement companies, and collection law firms—an area that continues to attract intense scrutiny. The CFPB continued its practice of issuing supervisory highlights and reports on research on debt collection, and filing amicus briefs.

Debt Collection Rulemaking

In June 2017, the CFPB announced that, based on the feedback received, it had decided to bifurcate an anticipated debt collection rulemaking. First, the CFPB said it would issue a proposed rule concerning FDCPA collectors' communications practices and consumer disclosures. The CFPB plans separate follow-up about potential rules covering information flows between creditors and collectors and first-party collections. The CFPB first announced it was considering rules for debt collection in 2013.

CFPB Enforcement Litigation and Settlement Highlights

The CFPB brought several new public enforcement actions involving debt collection and continued litigation in other cases that had been filed previously.

CFPB v. Think Finance, LLC

In November 2017, the CFPB filed a lawsuit against Think Finance, LLC, formerly known as Think Finance, Inc., for its alleged role in deceiving consumers into repaying loans that were not legally owed. The CFPB alleges that Think Finance illegally collected on loans that are void under state laws governing interest rate caps or the licensing of lenders. The CFPB seeks to recoup relief for harmed consumers and impose a penalty.

CFPB v. Freedom Debt Relief, LLC

In November 2017, the CFPB filed a lawsuit against Freedom Debt Relief, LLC, reportedly the nation's largest debt-settlement services provider, and its co-CEO for allegedly deceiving consumers. The CFPB alleges that Freedom charges consumers without settling their debts as promised, makes customers negotiate their own settlements, misleads them about its fees and the reach of its services, and fails to inform them of their rights to funds they deposited with the company. The CFPB is seeking compensation for harmed consumers, civil penalties, and an injunction against the defendants to halt their conduct.

CFPB v. Federal Debt Assistance Association, LLC, et al.

In October 2017, the CFPB filed a lawsuit against two companies operating under the name "FDAA," a service provider to the companies, and their owners for allegedly falsely presenting FDAA as being affiliated with the federal government. The CFPB also alleges that FDAA's so-called debt validation programs violated the law by falsely promising to eliminate consumers' debts and improve their credit scores in exchange for thousands of dollars in advance fees. The CFPB's lawsuit seeks to end these practices, obtain redress for harmed consumers, and impose civil money penalties.

CFPB v. National Collegiate Student Loan Trusts

In September 2017, the CFPB took action against the National Collegiate Student Loan Trusts (NCSLT) and their debt collector for allegedly filing illegal student loan debt collection lawsuits. According to the CFPB, consumers were sued for private student loan debt that the companies couldn't prove was owed or was too old to sue over. NCSLT consented to a judgment that required an independent audit of all 800,000 student loans in the trusts' portfolio. It prohibits NCSLT, and any company it hires, from attempting to collect, reporting negative credit information, or filing lawsuits on any loan that the audit shows is unverified or invalid. In addition, it requires NCSLT to pay at least \$19.1 million, which includes initial redress to harmed consumers, relinquished funds to the Treasury, and a civil money penalty. Under a separate consent order, the third-party

debt collector hired to collect NCSLT debt (and coordinate the collections litigation on NCSLT's behalf) was ordered to pay a penalty and agree to take certain measures on lawsuits already filed, and on a go-forward basis, where the requisite account level documentation is not in the collector's possession.

In the Matter of: Security National Automotive Acceptance Company, LLC

In April 2017, Security National Automotive Acceptance Company (SNAAC), an auto lender specializing in loans to servicemembers, entered into an administrative consent order with the CFPB for allegedly violating a CFPB consent order. In 2015, the CFPB ordered SNAAC to pay both redress and a civil penalty for illegal debt collection tactics, including making threats to contact

service members' commanding officers about debts and exaggerating the consequences of not paying. The CFPB alleged SNAAC violated the prior order by failing to provide refunds and credits to consumers. The consent order requires SNAAC to pay the redress it owes to those consumers and pay an additional \$1.25 million penalty.

CFPB v. Weltman, Weinberg & Reis Co., L.P.A.

Legal collections continued to draw the attention of the CFPB. In April 2017, the CFPB filed a lawsuit in an Ohio federal district court against the debt collection law firm Weltman, Weinberg & Reis ("Weltman"). The CFPB alleges that Weltman falsely represented in collection letters sent to consumers that attorneys were involved in collecting the debt. According to the CFPB, the law firm made statements on collection calls and

Summary of 2017 Supervisory Highlights Related to Debt Collection

TOPIC	EXAMINATION FINDING	CORRECTIVE ACTION
Impermissible communications with third parties. (Section 805(b) of the FDCPA)	No confirmation that the correct party had been contacted prior to beginning collection activities.	Enhanced consumer verification of first and last names, and confirmation of date of birth or the last four digits of consumer's SSN, before disclosing the debt or the nature of the call. Review process to discuss debt with authorized user only after explicit authorization. Training
Deceptively implying that authorized users are responsible for debt. (Section 807(10) of the FDCPA)	Attempt to collect from an authorized user of a credit card even though the user was not financially responsible for the debt.	Remedial action
False representations regarding the effect on a consumer's credit report of paying a debt in full rather than settling the debt. (Section 807(10) of the FDCPA)	False representations to consumers about the effect on their credit score of paying debt in full. Debt owners or third-party collectors may deceive consumers if they make representations that paying debts in collections will improve a consumer's credit score.	Amend training materials to remove references to how a consumer's credit score may be affected by either settling the debt in full or paying the debt in full.
Communicating with consumers at a time known to be inconvenient. (Section 805(a)(1) of the FDCPA)	Consumer contact outside of the hours of 8 am to 9 pm (which, in the absence of knowledge to the contrary, the CFPB asserted may be assumed to be convenient) or at times consumers had previously informed the entities were inconvenient. Violations caused by the failure to update account notes and the use of auto dialers that based call parameters solely on area code.	Enhance compliance monitoring for dialer systems to ensure that they input system parameters accurately and to ensure that they properly monitor collectors for inputting and adhering to account notations.

sent collection letters creating the false impression that attorneys had meaningfully reviewed the consumer's file, when no such review had occurred. The law firm denies the allegations, and the litigation is pending.

In the Matter of: Works & Lentz, Inc.; Works & Lentz of Tulsa, Inc.; and Harry A. Lentz, Jr.

In January 2017, the CFPB announced it entered into a consent order with two medical debt collection law firms and their president for allegedly falsely representing that letters and calls—some threatening legal action—were from attorneys attempting to collect on a debt when no attorney had yet reviewed the account. The CFPB ordered the defendants to provide financial relief to harmed consumers, correct their business practices, and pay a penalty.

Supervisory Examination Highlights

In addition to enforcement developments, the CFPB also continued its practice of reporting supervisory examination observations in the area of debt collection. In the summer of 2017, the CFPB reported that examiners discovered that debt collectors followed client instructions that led to violations of the FDCPA, including unauthorized communications with third parties, false representations made to authorized credit card users regarding their liability for debts, false representations regarding credit reports, and communications with consumers at inconvenient times. The CFPB advised that entities can mitigate the risk of an FDCPA violation if they determine whether client instructions would violate the FDCPA before following them.

Reports on Debt Collection

The CFPB continued its practice of issuing reports on the debt collection market:

- **Consumer Experiences with Debt Collection:** Findings from the CFPB's Survey of Consumer Views on Debt: In January 2017, the CFPB issued a report presenting the results of a "Survey of Consumer Views on Debt" that was conducted between December 2014 and March 2015.
- **Market Snapshot: Online debt sales:** In January 2017, the CFPB issued a report providing an introduction to the online marketplace for charged-off debt. The CFPB reported, "If designed properly, online marketplaces may have the potential to help responsible debt collectors acquire charged-off debts from responsible sellers more efficiently."

Amicus Briefs

The CFPB filed two amicus briefs related to debt collection in 2017:

- **Cohen v. Ditech Financial LLC (2nd Cir.):** Brief supporting application of the FDCPA to judicial foreclosure proceedings that can lead to a deficiency judgment.
- **Johnson v. Admiral Investments, LLC (8th Cir.):** Brief addressing application of the "competent attorney" standard to alleged false representations of amounts owed and Article III standing.

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By necessity, this article provides only general summaries based on CFPB materials, but not exhaustive treatments, of the CFPB's activities related to debt collection in 2017.



Alexandra Megaris' practice focuses on regulatory investigations and government enforcement matters involving state Attorneys General, the Federal Trade Commission (FTC), Consumer Financial Protection Bureau (CFPB), state regulatory agencies, and the U.S. Congress. She also works closely with Venable's federal and state government affairs teams in advocating for clients before these agencies.



Jonathan Pompan is a Partner in Venable LLP's Washington, DC office and co-chair of the firm's consumer financial services practice group. Jonathan has extensive experience representing companies before the FTC, CFPB, state attorneys general, and state regulators. In addition, he provides ongoing compliance and general counseling advice to clients in the consumer financial services sector.