

Commercial Financial Services Brief: CFPB Targets Lender Debt Collection Activities

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On July 10, 2013, the Consumer Financial Protection Bureau (CFPB) issued two bulletins, CFPB Bulletins 2013-07 and 2013-08, to address debt collection activities of lenders and debt owners collecting consumer debts. Debt collection practices have been governed by the Fair Debt Collection Practices Act (FDCPA) since 1977, but the FDCPA generally only covers third party debt collectors. The CFPB recently provided guidance that it intends to use its authority to regulate unfair, deceptive and abusive practices (UDAAP), to extend requirements similar to those contained in the FDCPA to lenders and debt owners engaged in debt collection activities.

CFPB Bulletin 2013-07 puts lenders on notice that their activities in collecting their own consumer debt will be subject of very similar rules and that their activities will now be more heavily scrutinized. Under the FDCPA, third party debt collectors are prohibited from engaging in abusive debt collection practices. Bulletin 2013-07 provides guidance that "covered persons" under the Dodd-Frank Act will similarly be prohibited from engaging in unfair, deceptive, or abusive acts or practices in their debt collection activities.

Under the Dodd-Frank Act, an act or practice is considered:

(a) unfair if:

- it causes or is likely to cause substantial injury to consumers,
- the injury is no reasonably avoidable by consumers, and
- the injury is not outweighed by countervailing benefits to consumers or to competition.

(b) deceptive if:

- the act misleads or is likely to mislead a consumer,
- the consumer's interpretation is reasonable under the circumstances, and
- the misleading act or practice is material.

(c) abusive if:

- it materially interferes with the ability of a consumer to understand any terms or conditions of a consumer financial product or service, or
- it takes unreasonable advantage of the consumer's lack of understanding of the material risks, costs or conditions of the product or service, the consumer's ability to protect his or her interests in selecting and using the product or service, or a consumer reasonably relies on the lender to act in the consumer's best interests.

Although the surrounding facts and circumstances will determine whether a lender's conduct will actually be deemed unfair, deceptive, or abusive, the CFPB will be closely watching consumer debt collection activities of lenders, with special attention focused on the following activities:

- Collecting or assessing a debt and/or any additional amounts in connection with a debt (including interest, fees, and charges) not expressly authorized by the agreement creating the debt or permitted by law.
- Failing to post payments timely or properly or to credit a consumer's account with payments that the consumer submitted on time and then charging late fees to that consumer.
- Taking possession of property without the legal right to do so.
- Revealing the consumer's debt, without the consumer's consent, to the consumer's employer and/or co-workers.

- Falsely representing the character, amount, or legal status of the debt.
- Misrepresenting that a debt collection communication is from an attorney.
- Misrepresenting that a communication is from a government source or that the source of the communication is affiliated with the government.
- Misrepresenting whether information about a payment or nonpayment would be furnished to a credit reporting agency.
- Misrepresenting to consumers that their debts would be waived or forgiven if they accepted a settlement offer, when the company does not, in fact, forgive or waive the debt.
- Threatening any action that is not intended or the covered person or service provider does not have the authorization to pursue, including false threats of lawsuits, arrest, prosecution, or imprisonment for non-payment of a debt.

The CFPB stated that it will “closely review any covered person or service provider’s consumer debt collection efforts” for violations of the Federal consumer financial laws and that it will use “appropriate tools” to evaluate whether supervisory, enforcement, or other actions may be necessary. In addition to the guidelines set forth in the CFPB Bulletin 2013-07, the CFPB also announced it will accept debt collection complaints and will publish action letters for consumers to consider using when corresponding with debt collectors.

CFPB Bulletin 2013-08 advises lenders and debt owners (together with their service providers) that the FDCPA and the Dodd-Frank Act together prohibit “covered persons” or service providers, including debt collectors, from engaging in deception while collecting on consumer debts. The bulletin provides specific guidance that that creditors and debt buyers are prohibited from making deceptive claims regarding the relationship between the consumer paying a debt in collection and:

- Improvements in a consumer’s credit report;
- Improvements in a consumer’s credit score;
- Improvements in a consumer’s creditworthiness; or
- An increased likelihood that a consumer will receive credit from a lender of more favorable credit terms.

The publication of these bulletins by the CFPB, along with the announcement that debt collection complaints will be accepted, means that all lenders, debt buyers and their service providers should carefully assess their current consumer debt collection practices and policies and determine what, if any, adjustments need to be made in order to address potential UDAAP concerns.

The entire CFPB Bulletin 2013-07 can be found here:

CFPB Bulletin 2013-07

The entire CFPB Bulletin 2013-08 can be found here:

CFPB Bulletin 2013-08

Gray Plant Mooty is a full-service law firm with specialized practices in consumer finance and regulation and community banking. Contact Hailey A. Harren or George E. Mainz if you have any questions regarding this alert.

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