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CFPB ISSUES PROPOSAL FOR DEBT COLLECTION REGULATIONS

The Consumer Financial Protection Bureau has issued a proposal for regulations to implement the federal Fair Debt Collection Practices Act and other statutory authorities that regulate collection agencies, debt buyers, collection law firms and loan servicers. The CFPB intends to convene a second proceeding in the coming months to consider regulations for creditors and others engaged in collection activity who are covered persons under the Dodd-Frank Act but are not "debt collectors" under the FDCPA.

The CFPB proposals address the following topics:

- Information Integrity and Related Concerns

The regulations would require debt collectors to (i) substantiate or possess a reasonable basis for claims that a particular consumer owes a particular debt, (ii) pass on certain information that a consumer provides in the course of collections to downstream collectors and (iii) provide improved validation notices and statements of rights. Debt collectors would be required, for example, to confirm that they have sufficient information to start collection, such as the full name, last known address, last known telephone number, account number, date of default, amount owed at default, and the date and amount of any payment or credit applied after default. The improved validation notice would include a "tear-off" portion that consumers could send back to the collector to easily dispute the debt, with options for why the consumer thinks the collector's demand is wrong. The tear-off would also allow consumers to pay the debt. A consumer could verbally question the debt's validity at any time, and prompt the collector to have to check its files.

- Consumer Understanding of the Debt Collection Process

The regulations would include (i) a requirement to provide a brief disclosure regarding the possibility of litigation and (ii) a requirement to provide disclosures and impose certain restrictions in connection with older debts that are beyond the applicable statute of limitations or generally barred from appearing on credit reports.

- Collector Communication Practices

The regulations would establish requirements and restrictions

with respect to, among other things, (i) contact frequency and the leaving of messages, (ii) the time, place and manner of collector contacts and (iii) collections in situations in which the debtor dies. Debt collectors would be prohibited, for example, from communicating more than six times per week through any point of contact before they reach the consumer. The CFPB is considering whether to apply the contact caps equally to all communication channels (e.g., telephone, mail, email, text messages, and other newer technologies), and whether to create separate limits per unique phone number or address as well as for total contacts per week. In addition, the regulations would establish a 30-day waiting period after a consumer has passed away during which collectors would be prohibited from communicating with certain parties, like surviving spouses. Director Cordray said that the intent is to give consumers control of collection communications.

- Transferring Debt

The regulations would prohibit debt buyers from placing debt with, or selling debt to, persons subject to a judgment, order, or similar restriction prohibiting them from purchasing or collecting debt in the state in which the consumer resides or those that lack any license required to purchase or collect debt, as applicable, in the state in which the consumer resides. The regulations also would prohibit the sale or placement for collection of debt when the debt buyer knows or should know that the debt was paid or settled, discharged in bankruptcy, or the result of identity theft.

Collectors transferring debt to another collector would need to provide fuller account history.

- Recordkeeping

The regulations would require a debt collector to retain records documenting the actions it took with respect to a debt for three years after its last communication or attempted communication (including communication in litigation) with the consumer about the debt.

The CFPB's proposals are in preparation for convening a Small Business Review Panel to gather feedback from small industry players. The CFPB also has indicated that it will continue to seek input from the public, consumer groups, industry and other stakeholders before continuing the rulemaking process. When

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proposed regulations are issued, the public will have the opportunity to submit written comments for the CFPB's consideration before final regulations are issued.

The proposal, if adopted, may have a dramatic effect on all participants in collections. To comply, collectors will need to demand more information from creditors. Smaller collectors and small businesses may find that the increased regulatory burden outweighs the advantages of clearer guidance and the corralling of bad actors.

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