



November 13, 2013

CFPB SEEKS INFORMATION ON DEBT COLLECTION RULEMAKING

The Consumer Financial Protection Bureau (CFPB) has issued an advance notice of public rulemaking (ANPR) seeking comment, data and information from the public about debt collection practices. The CFPB is interested in learning about the debt collection system, consumer experiences with the debt collection system and how rules for debt collectors might protect consumers without imposing unnecessary burdens on industry. In announcing the ANPR, Director Richard Cordray stated, "We want to hear how we can better protect consumers and bring greater accountability to this multi-billion-dollar industry without hamstringing legitimate debt collection activities." Cordray also noted that the CFPB views its job as rooting out bad actors that violate the law because "[t]heir violations hurt not only consumers, but also every debt collector that tries to operate within the law."

The CFPB noted that the Federal Trade Commission for many years has received more complaints about debt collectors than any other single industry. Since the CFPB began accepting debt collection complaints in July 2013, collection complaints have accounted for approximately 30% of daily complaint volume. The complaints cover a wide variety of acts and practices, with the most common topics being harassment, demands for amounts not owed, threats of dire consequences for non-payment and failure to provide required notices. In addition to complaints, private actions against debt collectors alleging FDCPA violations have increased from 3,215 in 2005 to 11,811 in 2011.

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA) authorized the CFPB to prescribe rules with respect to the collection of debts by debt collectors. The DFA gave the CFPB additional authority, including for example, the ability to issue regulations (i) identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service and (ii) to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service in light of the facts and circumstances.

The CFPB believes that (i) significant consumer protection problems persist despite vigorous government supervision and enforcement efforts, (ii) technological developments (such as email and text messaging) have created uncertainty with respect to applicability of the FDCPA and (iii) it is important to examine whether rules covering creditors collecting their own debts may be warranted. The CFPB believes the information collected from the ANPR will help it address each of these areas.

Eight principal topics are identified:

- Transfer and Accessibility of Information Upon Sale and Placement of Debts (Section II)
- Validation Notices, Disputes, and Verifications (Section III)
- Debt Collection Communications (Section IV)
- Unfair, Deceptive, and Abusive Acts and Practices (Section V)
- Time-Barred Debts (Section VI)
- Debt Collection Litigation Practices (Section VII)
- State and Local Debt Collection Systems (Section VIII)
- Recordkeeping, Monitoring and Compliance Requirements (Section IX)

The CFPB asks a total of 162 questions.

The CFPB would also like to receive information on other matters, including (i) how proposed rules should define and use relevant terms, (ii) whether rulemaking provides the preferred means of addressing a particular issue and where statutory changes or guidance would be a better approach and (iii) whether consumer testing or other research relevant to the ANPR's topics already has been conducted.

Information in response to the ANPR is due February 10, 2014.

The ANPR follows recent CFPB and Office of the Comptroller of the Currency orders against JPMorgan Chase [see our Alert of September 24, 2013] and heightened scrutiny of collection issues (including first party and creditor collections) on both the federal and state levels. Many in the financial services industry welcome the opportunity to modernize rules to reflect new technologies, although many (like creditors) may find the clarity of new rules and oversight responsibilities initially burdensome. We can assist you in making sense of the changing landscape. □

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