



August 1, 2017

CFPB ISSUES BULLETIN ON PAY-BY-PHONE FEES

The Consumer Financial Protection Bureau (“CFPB”) has published a compliance bulletin regarding fees for pay-by-phone services. See Phone Pay Fees, CFPB Bulletin No. 2017-01. The bulletin highlights conduct observed by the CFPB during supervisory examinations and enforcement investigations that may violate of the Dodd-Frank Act’s prohibition on unfair, deceptive or abusive acts or practices (“UDAAPs”) and the federal Fair Debt Collection Practices Act (“FDCPA”).

The bulletin provides a non-exhaustive list of conduct related to pay-by-phone fees that may constitute UDAAPs, including:

- *Failing to disclose the prices of all available pay-by-phones fees when an entity has multiple phone payment options that involve materially different fees.* The CFPB observed that entities that rely solely on phone representatives to disclose relevant fees have increased risk of UDAAPs and encourages entities to disclose relevant pay-by-phone fees in their documentations.
- *Misrepresenting available payment options or that a fee is required to pay by phone.* The CFPB focused in particular on expedited payment charges where free or lower cost alternatives are available and expedited processing is not urgently needed.
- *Failing to disclose that pay-by-phone fee would be added to a consumer’s payment, which could create the misimpression that no service fee is charged.*
- *Failing to monitor employees or oversee service providers, which may lead to misrepresentations or failures to disclose available options and fees.*

In regard to potential FDCPA violations, the CFPB reminded entities that the FDCPA restricts debt collectors from collecting any amount, including pay-by-phones fees, which is not expressly authorized in the agreement creating the debt or permitted by law.

The CFPB expects entities to review their practices on charging pay-by-phone fees for potential violations and will closely review conduct related to pay-by-phone fees. In particular, the CFPB encourages entities to review production incentive programs for potentially improper incentives that could encourage employees or service providers to engage in UDAAPs.

We can help review the permissibility of pay-by-phone fees under state laws, incentive programs and policies, procedures and call scripts involving pay-by-phone fees. □

✧ *Mike Tomkies and Susan Manship Seaman*

Darrell L. Dreher
ddreher@dtlaw.com

Elizabeth L. Anstaett
eanstaett@dtlaw.com

Emily C. Cellier
ecellier@dtlaw.com

Susan L. Ostrander
sostrander@dtlaw.com

2750 HUNTINGTON CENTER
41 S. HIGH STREET
COLUMBUS, OHIO 43215
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600
WWW.DTLAW.COM

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Michael C. Tomkies
mtomkies@dtlaw.com

Susan M. Seaman
sseaman@dtlaw.com

Judith M. Scheiderer
jscheiderer@dtlaw.com

Robin R. De Leo
robin@dreher-la.com