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CFPB ISSUES ADVISORY OPINION ON DEBT COLLECTION CONVENIENCE FEES

The Consumer Financial Protection Bureau has issued an advisory opinion interpreting the federal Fair Debt Collection Practices Act to prohibit a debt collector from charging a convenience fee to consumers unless either the agreement creating the debt or applicable law expressly authorize the fee. The advisory opinion interprets 15 U.S.C. § 1692f(1)'s prohibition on collecting "any amount (including any interest, fee, charge or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law." The CFPB now interprets the provision to prohibit "any amount collected . . . including, but not limited to, any interest, fee charge or expense that is incidental to the principal obligation." The CFPB also interprets the phrase "permitted by law" to mean "expressly permitted by law." To the CFPB, for a debt collector to collect a fee, that fee must be either (i) expressly permitted in the underlying agreement for the debt (and the fee is not prohibited by other law) or (ii) expressly authorized by a statute or regulation. The CFPB uses this interpretation to prohibit collectors from charging a fee to make debt collection payments through a particular channel—commonly referred to as "convenience fees" or "pay to pay fees"—unless the fee fits into either option (i) or (ii) above.

The advisory opinion concludes that a fee is unlawful under Section 1692f(1) when the agreement creating the debt and the applicable law are silent on the fee—even if the fee is authorized in a separate, valid agreement. The advisory opinion also states that debt collectors will face FDCPA liability if the debt collector uses a third party payment processor who charges an unauthorized convenience fee. Because the interpretation is in an advisory opinion and not a rule subject to notice and comment procedures, its conclusions do not have the force of law. However, the advisory opinion will likely be used by the CFPB and plaintiffs' attorneys as persuasive authority in future litigation over the scope of Section 1692f(1). □

◇ *Elizabeth Anstaett and Benjamin Hurford*

DEALING WITH MULTISTATE DEBT COLLECTION COMPLIANCE?

We routinely advise on collection-related activities and the regulated activities of creditors, third party debt collectors, debt buyers and loan servicers. We also publish an easy-to-use reference that compiles state and federal laws governing debt collection practices. Our DEBT COLLECTION DIGEST is organized topically, includes the federal Fair Debt Collection Practices Act and Commentary for easy cross-reference, and covers ADAD and monitoring and recording statutes. **Contact us for details.**

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