



Consumer Financial Protection Bureau (CFPB) Update



Presented by:

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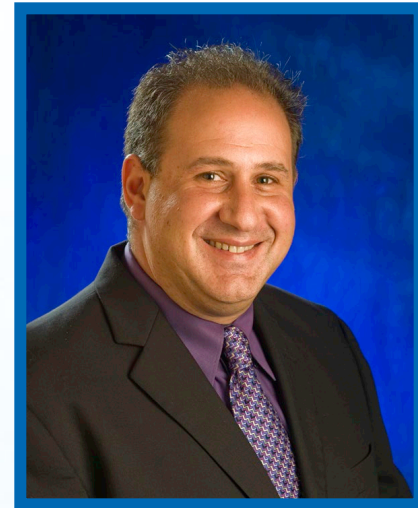
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ConServe

Introduction

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Legal Disclaimer

- The views and opinions expressed by the Presenter are those of the Presenter.
- This information is not intended as legal advice and may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case.
- Every effort has been made to assure this information is up-to-date as of the date of publication.
- This information is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the advice of your own legal counsel.



Agenda

- New CFPB Leadership
- CFPB Semi-Annual Regulatory Agenda
- CFPB Request for Information (RFI)
- Proposed Debt Collection Rules
- Client Considerations
- Summary



New CFPB Leadership

- On 11/15/2017, Director Richard Cordray announced departure from CFPB.
- On 11/24/2017, President Trump appoints Mick Mulvaney as Acting CFPB Director.
- On 12/04/2017, Mulvaney announced that the CFPB put a hold on all new rules, and new rulemaking.
- On 01/23/2018, Mulvaney issued “Memo” to CFPB staff



Consumer Financial
Protection Bureau

Semiannual Regulatory Agenda Fall 2017



Implementing Statutory Directives

- Mortgage rules
- Timing of Mortgage servicing disclosure requirements
- Arbitration
- Payday, auto title, and similar lending products
- Debt Collection
- Overdraft programs on checking accounts
- Larger participant and non-depository lender registration
- Prepaid financial products



CFPB Request for Information (RFI)

- On March 14, 2018, the CFPB issued a “**RFI**” (Request for Information) regarding Adopted Regulations and New Rulemaking Authorities.
- CFPB is seeking comments & information in considering whether CFPB should amend any rules it has since created or issue rules under new rulemaking authority provided for by the Dodd-Frank act.
- 90 Day Comment Period



CFPB Releases Proposed Rules

- On July 28, 2016, the CFPB released their Outline of Proposed Rules governing third-party debt collectors.
http://files.consumerfinance.gov/f/201311_cfpb_anpr_debtcollection.pdf
- The proposed rules cover a wide range of topics including topics raised in the ANPR (Advanced Notice of Proposed Rulemaking)
 - Debt Substantiation
 - Transfer of data from collection agency to collection agency
 - Time Barred Debt
 - Contact Frequency and voice mail messages
- The rules apply primarily to third-party debt collectors & debt buyers.



Debt Substantiation

- Debt Substantiation in the CFPB's proposed rules focuses on the following phases of the collection process:
 - 1) Initial Review (Before Collections)
 - 2) During Course of Collections (After Dispute)
 - 3) Before Filing Litigation



Debt Substantiation – Initial Review

- Obligations Before Initiating Debt Collection
- Obtain “*Fundamental Information*”
- Obtain a “*Written Representation*” from debt owner to ensure accuracy of information
- Require Debt Collectors to review information obtained from debt owner for “*Warning Signs*”



Debt Substantiation – Fundamental Info for Review

- Full Name, last known address, and last known telephone number of the consumer;
- The account number of the consumer with the debt owner at the time the account went into default;
- The date of default, the amount owed at default, and the date and amount of any payment or credit applied after default;
- Each charge for interest or fees imposed after default and the contractual or statutory source for such interest or fees; and
- Complete chain of title from the debt owner at the time of default to the collector



Initial Review – Written Representation

- The Debt Owner must state:
 - 1) It has adopted and implemented “reasonable policies and procedures” to ensure the accuracy of the transferred information
 - 2) The transferred information is “identical” to the information in the debt owner’s records.
- The representation must be made in writing



Initial Review – Warning Signs

- Debt Collectors must look for warning signs that may raise questions as to the accuracy of the information that might appear in individual accounts or across an entire portfolio
- Examples provided by CFPB:
 - Information for an individual debt is not in clearly understandable form; facially implausible or contradictory
 - Significant percentage of debt in portfolio has missing or implausible information or unresolved disputes
- Debt Collectors are “not” required to confirm all information



Debt Substantiation – After Dispute

- **Definition of Dispute**
- **Subsequent Collectors**
 - Filed disputes that had not been addressed by a previous collector would be required to be transferred to the new collector.



Debt Substantiation – After Dispute

- **Written Disputes within 30 days of Validation Notice**
 - Provide documentation establishing information for relative category of dispute
- **Duplicate Disputes**
 - Not required to substantiate debt; but must notify consumer that the dispute is duplicate
- **Oral Disputes within 30 days of Validation Notice**
 - Review documentation for relevant category of dispute to establish reasonable support for claims



Dispute Categories as defined by CFPB

- Generic disputes
- Wrong amounts disputes
- Wrong consumer disputes
- Wrong collector disputes



Generic Disputes

Generic Dispute Documentation

- First and last name, address and account number (with the creditor at the time of default) of the debtor;
- The date of default and date of last payment;
- The name and address of the creditor at default; and
- The amount of the debt balance at default and any post-default interest and fees, and description of the amount owed.



Specific Dispute - Wrong Amount Disputes

Disputes as to Amount of Debt

- Generic Dispute documentation requirements
- The amount of principal, interest or fees disputed;
- The basis for seeking to collect any such disputed amount (e.g. late fee or collection charges) including the terms and conditions relevant to collection of any post-default interest or fees, if applicable;
- The date and amount of each payment (or other credit) after default; and
- Any additional information required to respond to the specific dispute.



Specific Dispute – Wrong Consumer Disputes

Disputes as to Wrong Consumer

- Generic Dispute documentation requirements
- Either
 - Information that the consumer provided to the Creditor with respect to the consumer's date of birth and information obtained with respect to the consumer's addresses throughout the life of the account; or
 - A number that uniquely identifies the consumer, such as taxpayer ID number (e.g. SSN, EIN, ITIN)
- The consumer's original agreement or original consent to the debt; and
- Any additional information required to respond to the specific dispute



Specific Dispute – Wrong Collector Disputes

Disputes as to Wrong Collector

- Generic Dispute documentation requirements
- The names and address of all persons that obtained the debt after default (as Debt Owners or third-party collectors), and the date of and parties to each purchase, assignment or transfer, and
- Any additional information required to respond to the specific disputes



Disputes – Before Filing Litigation

Documentation for Claims in Litigation

- Must have reasonable support for claims that consumer being sued owes the amount claimed and the legal right to make the claim.
- Collectors could satisfy their “reasonable support” obligation by obtaining and reviewing all of the specified consumer dispute documentation
- Collectors that do not review the documentation specified for all types of disputes could acquire a reasonable basis consistent with the level of support through alternative methods, but would bear the burden of justifying any alternative approach.



Proposed Rules – Transfer of Information

Transfer & Review of Certain Information

- Require Debt Collectors to obtain and review certain information that could either:
 - Affect the subsequent collectors' obligations to comply with FDCPA and other federal consumer protection laws.
 - Facilitate collector behavior that may be beneficial to consumers
- Obligate prior Debt Collectors to transfer this information if the consumer provided it to them in the course of collection activity, but it generally would not require Debt Collectors to attempt affirmatively to obtain the information.



Transfer of Information – FDCPA Compliance

Transfer of Information affecting FDCPA compliance

- Whether the debt was disputed in writing within 30 days of receipt of the validation notice and either that the debt was verified or dispute details (including information consumer submitted or prior collector provided)
- Whether the debt was disputed orally or more than 30 days after receipt of the validation notice and either that the claims were substantiated or dispute details (including information the consumer submitted or the prior collector provided)
- Any time, place or method of communication that the consumer stated is inconvenient;



Transfer of Information – FDCPA Compliance

Continued:

- The name and address of any Attorney who is representing the consumer in connection with the debt;
- Whether the consumer's employer prohibits the consumer from receiving collection communications at the place of employment.
- Whether the collector has made confirmed consumer contact, and the contact information used to establish such contact;
- Whether the collector has provided the time-barred debt disclosure; and
- Whether the consumer is deceased and, if so, the date of death



Transfer of Information – Other laws

Transfer of Information affecting compliance with other federal consumer protection laws

- Whether the consumer is active duty service member and whether the consumer has secured an interest rate reduction pursuant to the SCRA;
- For defaulted student loans, whether the consumer has applied for discharge of the debt on a basis that imposes a collections pause, and the date of the application;
- For defaulted student loans eligible for rehabilitation, the terms of any rehabilitation agreement, the number of payments made, and any requested adjustment to the amount of the monthly payment; and
- Whether the consumer's income and assets are exempt under federal or state laws from judgment-creditor seeking garnishment related to debt collection litigation



Transfer Information – Beneficial to Consumer

Certain other information that may be beneficial to consumers

- Language preference of the consumer
- Whether the consumer has submitted an oral or written cease communication request



Information Forwarding Requirements

- CFPB is considering requiring collectors to forward the following information after returning the debt to the owner or selling it to subsequent debt buyer
 - Payments submitted by the consumer;
 - Bankruptcy discharge notices;
 - Identity theft reports;
 - Disputes; and
 - Any assertion or implication by the consumer that his or her income and assets are exempt under federal or state laws from a judgment-creditor seeking garnishment



Validation Notice – Content

Example: Tear-Off in Model Validation Notice:

How do you want to respond to this notice?

Check all that apply:

I want to dispute the debt because I think:

This is not my debt

The amount is wrong

I already paid this debt in full or I settled it

Other or more detail

I want you to send me the name and address of the original creditor

I enclosed this amount \$ _____

Make check payable to ConServe, and include reference number 123456



Validation Notice – Statement of Rights

- One page Statement of Rights document.
 - Lists consumer rights under the FDCPA, FCRA and other federal/state laws
 - Written copy provided in same mailing as the validation notice
 - Must offer or provide additional Statement in the first communication is made more than 180 days after last one



Litigation Disclosure

Require Debt Collectors to provide:

- Brief “litigation disclosure” in all written and oral communications in which they represent, expressly or by implication, their intent to sue.
- Inform the consumer that
 - 1) Debt collector intends to sue;
 - 2) That a court would rule against the consumer if he or she fails to defend a lawsuit; and
 - 3) That additional information about debt collection litigation is available from CFPB
- Disclosure must be made at the same time and using the same medium they represent that they intend to sue



Proposed Rules - Time Barred Debt

- Prohibit suit and threats on time-barred debt
- Time-barred debt disclosures
 - Brief, plain language statement informing the consumer, because of age of debt, the debt collector cannot sue to recover it
 - Required in initial validation notice & first oral communication
- Obsolescence disclosures
 - Require disclosure that would inform the consumer whether a particular time-barred debt generally can or cannot appear on a credit report.
 - Required in initial validation notice, but CFPB considering whether to require it at additional intervals
- Waiver of Revival
 - Prohibit collectors from collecting on time barred debt that can be revived under state law unless they waive the right to sue on the debt



Voicemails

- CFPB proposed Voicemail Message:
*“This is John Smith calling for David Jones.
David, please contact me at 1-888-123-4567”*
- Can be used for voicemails, live third-party communications, text messages, emails, etc.

Contact Frequency – Consumer Contacts

Permissible Consumer Contact (or Contact Attempts) Per Account per Week		
Collector Activity	Collector Does Not Have Confirmed Consumer Contact	Collector has Confirmed Consumer Contact
Attempts per unique address or phone number	3	2
Total contact attempts	6	3
Live Communications	N/A	1

Contact Frequency – Location Contacts

Permissible Number of Location Contacts (or Contact Attempts) To a Third-Party Per Account Per Week		
Collector Activity	Collector Does Not Have Confirmed Consumer Contact	Collector has Confirmed Consumer Contact
Attempts per unique address or phone number per Third Party	3	0
Total contact attempts per Third Party	6	0
Total contact attempts across all Third Parties	No Specific Limit	0
Live Communications per Third Party (total, not weekly)	1	0



Time, Place & Manner Restrictions

■ Inconvenient Times

- Specify how a Debt collector determines a consumer's location when there is conflicting location information for the consumer
- Require that it must be convenient in “ALL” locations consumer might be
- Time a communication is “SENT” is the determining factor for newer technologies.



Time, Place & Manner Restrictions

- **Inconvenient Place –**

- Specify certain locations that will trigger the FDCPA presumption that a consumer is in an inconvenient place & thus a collector would not be able to continue communication.
- Includes: Medical facilities; place of worship; place of burial or grieving; daycare or childcare centers or facilities.

Client Considerations

- Review & educate your staff on CFPB Proposed Rules for Debt Collection that directly impact YOU!!
- Review your Debt Substantiation Documentation
 - Compare to CFPB's dispute documentation guidelines
- Review & Transfer of Information
 - Review your existing placement layouts
 - Compare to CFPB's guidelines for transfer & forwarding information to subsequent collectors
- Reach out to Agency/Partner for assistance

Summary

- Provided overview of CFPB Rulemaking Agenda and CFPB Debt Collection Rules that have a direct impact on our Clients
- Provided examples for each rule, taken directly from CFPB, on what they expect in order to comply with the new rules
- Provided Recommendations to Clients

Resources

- Consumer Financial Protection Bureau (CFPB)
www.consumerfinance.gov
- insideARM.com
www.insidearm.com/
- Coalition of Higher Education Assistance Organizations (COHEAO)
www.coheao.com/
- National Council of Higher Education Resources (NCHER)
www.ncher.us/



Questions?

Thank you!

