

A Broader Application Of Fair Debt Collection Principles

Law360, New York (July 12, 2013, 9:41 AM ET) -- On July 10, the Consumer Financial Protection Bureau issued new debt collection guidance and announced broad application of the Fair Debt Collection Practices Act under Sections 1031 and 1036 of the Dodd-Frank Act. The guidance suggests that the CFPB views the acts and practices made illegal by the FDCPA to be Unfair, Deceptive And Abusive Practices (UDAAP) under a different name.

While the CFPB published a larger participant rule in October 2012, allowing federal supervision of certain consumer debt collectors and a field guide for use in examinations of companies and banks engaged in debt collection, the new guidance brings the rest of the market into the fold. In effect, all CFPB-supervised entities must comply not only with the DFA but also with aspects of the FDCPA governing the consumer experience of debt collection.

The FDCPA prohibits a “debt collector” from engaging in any conduct, “the natural consequence of which is to harass, oppress or abuse any person in connection with the collection of debt,” to “use any false, deceptive or misleading representation or means in connection with the collection of any debt,” or to “use any unfair or unconscionable means to collect or attempt to collect any debt.”

The FDCPA generally applies to third-party debt collectors, including collection agencies, debt purchasers and attorneys who engage in debt collection. It does not apply to companies collecting on their own behalf. CFPB Bulletin 2013-07 acknowledges that the FDCPA “does not include some persons who collect consumer debt,” but admonishes that “all covered persons and service providers must refrain from committing UDAAPs” in the collection of debt.

The guidance reiterates the statutory elements of UDAAPs and specifically identifies the following as raising particular concerns:

- Threatening action that the debt collector does not have the authority to pursue
- Collecting or assessing a debt and/or interest, fees or other charges not expressly authorized by agreement or permitted by law

- Falsely representing the character, amount or legal status of the debt
- Misrepresenting that a consumer's debt will be waived or forgiven by operation of settlement
- Failing to timely and properly post payments or credit to a consumer's account (and, as a result, charging unwarranted fees)
- Taking possession of property without a legal right to do so
- Revealing the existence of a consumer's debt, without permission, to the consumer's employer or co-workers
- Misrepresenting that a debt collection communication is from an attorney or a government source (or misrepresenting affiliation with the government)
- Misrepresenting whether information about payment or nonpayment will be furnished to a credit reporting agency

Also on July 10, the CFPB issued Bulletin 2013-08, which specifically provides guidance to creditors, debt buyers and debt collectors relating to representations about the impact that payments on debts in collection may have on (1) credit reports, (2) credit scores, (3) creditworthiness, or (4) the likelihood of receiving credit or more favorable credit terms. The bulletin states that deceptive claims of "illustrative" and "nonexhaustive" quality are a matter of "significant concern" to the CFPB.

In light of these two bulletins, all creditors and servicers of consumer obligations — including debt owners and debt collectors — may benefit from a risk assessment focused on FDCPA and UDAAP compliance, with special attention to consumer communication materials, scripts, training manuals and related documentation. It remains to be seen whether the CFPB will pursue debt collection reform principally through rules or enforcement.

The bureau released its spring 2013 regulatory agenda on July 3, which indicates that further action on debt collection rulemaking will come in October. In the meantime, the guidance explicitly states that the bureau will "use all appropriate tools to assess whether supervisory, enforcement or other actions may be necessary."

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