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NEW OCC GUIDANCE ON DEBT SALES

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On August 4, 2013, the Office of the Comptroller of the Currency (“OCC”) released new guidance to (Bulletin 2014-37) regulated entities on the application of consumer protection requirements and safe and sound banking practices to consumer debt-sale arrangements with third parties (e.g., debt buyers) that intend to pursue collection of the underlying obligations. This new guidance takes the place of a best practices document provided in July 2013 to the Senate Subcommittee on Financial Institutions and Consumer Protection. It emphasizes that banks must be cognizant of the significant risks associated with debt-sale arrangements, including operational, compliance, reputation, and strategic risks. The OCC’s view is that banks that engage in debt sales should do so in a safe and sound manner and in compliance with applicable laws—including consumer protection laws.

The guidance describes the OCC’s expectations for banks that engage in debt-sale arrangements, including

- ensuring that appropriate internal policies and procedures have been developed and implemented to govern debt-sale arrangements consistently across the bank.
- performing appropriate due diligence when selecting debt buyers.
- ensuring that debt-sale arrangements with debt buyers cover all important considerations.
- providing accurate and comprehensive information regarding each debt sold, at the time of sale.
- ensuring compliance by the bank with applicable consumer protection laws and regulations.
- implementing appropriate oversight of debt-sale arrangements.

The guidance makes clear that if OCC examiners find unsafe or unsound practices or practices that fail to comply with applicable laws or regulations, the OCC may bring enforcement actions. For example, the OCC announced a large enforcement action with a **major bank** regarding its collection activities in September 2013. The guidance also states that when the OCC becomes aware of concerns with nonbank debt buyers, the agency refers those issues to the CFPB, which has jurisdiction over these entities.

As OCC Bulletin 2014-37 is effective immediately, banks should consider and enhance their debt sales programs to achieve full compliance with the new guidance. At the same time, would-be debt buyers should consider and enhance their compliance management systems and compliance programs in order to meet the expectations of banks and their supervisory examiners.

A copy of the Bulletin can be found [here](#).

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Jonathan L. Pompan, a partner in the Washington, DC office of Venable LLP, co-chairs the firm’s Consumer Financial Protection Bureau (“CFPB”) Task Force. His practice focuses on providing comprehensive legal advice and regulatory advocacy to a broad spectrum of clients, such as nonbank financial products and services providers, including debt buyers and collectors, advertisers and marketers, and trade and professional associations, before the CFPB, FTC, state Attorneys General, and regulatory agencies.

For more information about this and related industry topics, see www.venable.com/cfpb/publications.

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