

May 2013

Regulatory Alert – Nonbank Debt Collection: Compliance and Consumer Protection Readiness

What you need to know:

- In January 2013, the CFPB expanded the scope of nonbanks under its supervisory authority to include large nonbank debt collectors. Approximately 175 large debt collection firms, which are defined as entities having more than \$10 million in annual consumer debt collection receipts, will fall under the CFPB's nonbank supervision program (covered nonbank debt collectors).
- Examination of these large nonbank debt collectors will consider compliance with relevant federal consumer financial laws, including the Fair Debt Collection Practices Act (FDCPA), assess other risks to consumers, including unfair, deceptive, or abusive acts or practices (UDAAP), and evaluate other focus areas such as the strength and maturity of a Compliance Management framework.
- The CFPB has begun to issue data requests to covered large nonbank debt collectors, seeking information across product life cycles and enterprise-wide operations, in an effort to understand the industry and focus future physical exams. Primarily, the Bureau is looking at areas highlighted by issues identified in the CFPB's annual report to Congress (see below), such as:
 - Data integrity and accuracy
 - Communication with consumers
 - Complaint and dispute resolution
 - Stream of debt sales (where debt collectors buy charged-off debt from creditors)
 - Policies and practices around collections
 - Employee training.

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These areas are also consistent with modules outlined in the CFPB's Examination Procedures for Debt Collectors, which were released in October 2012.

- In March 2013, the CFPB filed its second annual report to Congress summarizing the Bureau's activities to administer the FDCPA. The Bureau shares overall enforcement responsibility for the FDCPA with the Federal Trade Commission (FTC) and other federal agencies; the report covers much of the work conducted by the CFPB and the FTC during 2012. Recent actions taken by the CFPB to prevent nonbank debt collectors from engaging in practices that violate UDAAP or the FDCPA include:
 - Announcing a public enforcement action against an entity's debt collection practices that the CFPB found to be deceptive. The action resulted in restitution of approximately \$85 million to 250,000 consumers;
 - Conducting several non-public investigations of companies to determine whether violations of the FDCPA, the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable federal consumer financial laws and their implementing regulations have occurred; and
 - Serving as an advocate for consumers in lawsuits against debt collectors by appearing as an amicus (friend of the court) in two cases arising under the FDCPA.

The report findings also note that the FTC received more than 125,000 consumer complaints against debt collectors, representing more than 24 percent of all of the complaints received by that agency. (The CFPB has not yet begun accepting consumer complaints against debt collectors.) Complaints included claims of harassment, demanding an incorrect amount, failure to send required written notices, failure to provide identity, revealing alleged debt to third parties, and continuing contact after receiving "cease communication" notices.

What you need to consider:

Nonbank debt collectors should assess the current state of their Compliance Management Framework and debt collection processes (i.e., communication with debtors, accounts sold to external parties, integrity of collections data, etc.) and related systems; compare processes against regulatory and industry expectations to identify gaps in compliance controls; and develop and execute a remediation plan to ensure that the compliance framework and debt collection processes align with regulatory requirements and industry, giving consideration to, among other things, the following:

- Compliance Governance and Culture:
 - “Tone from the top”
 - Enterprise-wide culture of compliance
 - Independent reporting structures
- People:
 - Sufficient resources
 - Appropriate training
- Policies, Procedures, and Processes:
 - Consistent approach and application
- Monitoring, Testing, and Reporting:
 - Third-Party Vendor oversight
 - Compliance risk assessments
 - Complaint handling processes
 - Process controls for information verifications
 - Reporting (such as to credit rating agencies).

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